

Agricultural Dwelling Appraisal

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Dovecote Farm

Barnburgh

Doncaster

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On Behalf of Mr John Richardson

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1 Introduction

This Planning Statement has been prepared by Carter Jonas LLP on behalf of Mr J Richardson of Dovecote Farm, Barnburgh.

The objective of this report is to provide a critical appraisal of the agricultural business trading as M H Richardson in order to assess the business and holding to establish whether the erection of a permanent agricultural dwelling would be appropriate in planning terms.

This report has been prepared by David Davenport. David Davenport is a rural surveyor and holds a Bachelor of Science with Honours Degree in Rural Enterprise and Land Management, is a Professional Member of the Royal Institution of Chartered Surveyors, having qualified in the Rural Practice Division and is also a Fellow of the Central Association of Agricultural Valuers.

David Davenport has nine years' experience in rural planning whilst employed by Leonards, East Riding of Yorkshire Council and Carter Jonas. His role at East Riding of Yorkshire Council was to provide advice to the Planning Department on planning applications for agricultural dwellings in the county and this included representing the Council at Planning Appeals.

2 Background Information

A site visit and interview with the applicant was undertaken on 12 May 2016 and 09 June 2016. At the site visit the applicant provided all the details regarding the current business and future plans. The report is based on the information provided.

The proposal is to erect an agricultural workers dwelling at Dovecote Farm to allow the applicant to continue to be onsite and able to meet the needs of the farm business.

3 Farm Business

The farm business trades as M H Richardson and the sole base for the farming operations is at Dovecote Farm, near Barnburgh.

Dovecote Farm is located in open countryside to the west of the village of Barnburgh, approximately 8 miles west of the town of Doncaster and approximately 10 miles east of the town of Barnsley.

The Richardson family have farmed at Dovecote Farm since 1930.

Dovecote Farm comprises a range of livestock, produce and storage buildings together with agricultural land.

Land owned/occupied by the farm business is set out below:

Land Holding	Description	Status	Area (acres)
Dovecote Farm, Barnburgh	Farmhouse, buildings and agricultural land	Owner occupied	121
Land at Barnburgh	Agricultural Land	Owner occupied	95
Land at Barnburgh	Agricultural land	FBT agreement	121
Land at Silkstone	Agricultural land	FBT agreement	80
TOTAL			417 acres

The farm business is based around the dairy herd of Jersey cows. All progeny from the dairy herd are kept as replacements and all bulls are reared and finished for beef with the heifers retained for replacements and to allow the continued expansion of the dairy enterprise. The dairy herd is based solely at Dovecote Farm with no other buildings within the control of the farm business.

The dairy unit is a closed herd with no replacements purchased and therefore all replacement are reared on site at Dovecote Farm from the existing dairy herd. The dairy enterprise continues to go through a period of expansion having been re-established in 2010 by both John and Matthew Richardson. The dairy herd is housed throughout the winter months and is grazed on the pasture land surrounding Dovecote Farm during Spring and Summer.

At present the following livestock is currently on the holding:

Number	Type
100	Dairy Cows
25	In-calf and served heifers
50	Youngstock 6-15 months
25	Calves under 6 months

The business is currently milking 100 cows with the intention to expand to 150 cows within the next eighteen months to two years and their intention to expand is demonstrated by the recently refurbished farm buildings for livestock housing and the purchase of the farm.

In addition to the dairy herd and associated youngstock and cattle rearing enterprises there are arable, sheep and cattery enterprises.

Arable – The farm business undertakes all the farming operations in house with all produce stored at Dovecote Farm.

Sheep – During the winter months sheep owned by third parties are taken on to graze the pasture land at Dovecote Farm, with the farm business being responsible for the livestock whilst on the farm.

Cattery – Established in 2004 by Mrs Richardson the cattery enterprise has capacity for 30 cats and is a successful enterprise.

In summary, Dovecote Farm is clearly a successful dairy farm with associated replacements, beef rearing business, arable enterprise and diversified cattery enterprise. The nucleus of the business is clearly at Dovecote Farm where all milking, calving and rearing is undertaken.

4 Labour

The current labour for the farm and cattery business comprises the following:

Maurice Richardson (aged 75) who has now effectively retired from the farming business.

Hazel Richardson (aged 65) who is responsible for the management and day to day responsibilities of the cattery.

John Richardson (aged 31) who works full-time on the farm business.

Matthew Richardson (aged 27) who works full-time on the farm business.

Rachel Richardson (aged 29) who works part-time on the farm business.

No additional seasonal staff is employed by the farm business and contractor usage is minimal.

The labour requirement for the current enterprises based on the standard data below shows a labour equivalent of 2.84 full time units, with 2.43 full time units in connection with the livestock element only and once the dairy herd has increased to 150 cows milking the livestock only element will increase to 3.23 full time units. No account has been taken of the cattery enterprise.

Standard Man-Days (SMD) Labour Requirements			
Agricultural Enterprise	Hours per Ha/Head	Ha/Head	Sub-total
Dairy	35	100	3,500
Calves (0-3 months)	21	25	525
Calves (3-6 months)	9	25	225
Other Cattle	14	50	700
Sheep	2	200	400
Arable	6	150	900
Total Hours per annum			6,250
Total Full-Time Workers (based on 2,200 hours/annum)			2.84
Total Hours per annum (livestock only)			5,350
Total Full-Time Workers (based on 2,200 hours/annum)			2.43
Total Hours per annum (livestock only once dairy numbers have increased to 150 head)			7,100
Total Full-Time Workers (based on 2,200 hours/annum)			3.23

5 Dwellings

There is currently one dwelling at Dovecote Farm. This dwelling is the farmhouse and is occupied by Mr & Mrs Richardson (senior) together with Matthew and John Richardson and their young families. In total there are six adults and two young children living in the main farmhouse.

In order to allow both Matthew and John Richardson to meet the functional requirements of the farm business it has been necessary for them to continue to reside in the main farmhouse together with their parents. There is no doubt that this existing arrangement is unsustainable and therefore the farm business is looking to erect a new agricultural dwelling to meet the needs of the farm business.

The existing occupier of the farmhouse at Dovecote Farm, Mr Maurice Richardson is retired from the farm business and Mrs Richardson continues to run the cattery business, a position which reflects the findings in *Keen v Secretary of State for the Environment and Aylesbury Vale District Council* ([1996] JPL), an approach confirmed in *J R Cussons and Son v Secretary of State for Communities and Local Government* ([2008] EHW 443). The judgements make it clear that it is necessary to test whether there is accommodation which is both suitable and available. Where there is existing accommodation (ie the farmhouse at Dovecote Farm), it must be subject to scrutiny as to whether it can reasonably be held to be available. In accordance with the *Keen* decision, the existing farmhouse is not available since it would be unreasonable to expect the existing occupier to vacate his home in order to retire and also there is a requirements for Mrs Richardson to be onsite to meet the needs of the cattery enterprise. This would accord with the approach taken by Planning Inspectors (Appeal References: APP/N6845/A/09/2106131, APP/V3310/A/09/2118524 & APP/W9500/A/08/2087370).

The previous application withdrawn by the applicant includes comments from the Council's Planning Officer detailing that he considers that the essential need could be met by a dwelling approximately 5 minute drive from the farm. I have commented on this analysis below:

- The existing farmhouse is occupied by Mr Richardson who is retired and no longer physically capable of undertaking heavy duties in particular handling cattle and Mrs Richardson who is on site to meet the needs of the cattery enterprise and therefore it is not considered to be available to meet the needs of the dairy enterprise. This reflects the findings of the above case law and appeal decisions.
- There is an essential requirement for at least two workers to be readily available on site to meet the needs of the dairy enterprise, which reflects the finding in the appeal decision reference APP/Y1138/A/13/2200238.

6 Financial Analysis

I have viewed the farm business and cattery business accounts for the years ending 2015, 2014 & 2013. These demonstrate that the business has been profitable and continues to be profitable. Such performance has been achieved through appropriate attention to detail, high output and a good control of costs.

The farm business has demonstrated their intention to grow the business through the recent purchase of the freehold interest in Dovecote Farm. Furthermore, in recent years they have purchased a range of modern machinery and expanded the livestock buildings and dairy herd with a view to the future.

7 Planning Status

Dovecote Farm is located in the open countryside, where the National Planning Policy Framework (the Framework) states that isolated homes should be avoided, unless special circumstances apply such as the essential need for a rural worker to live permanently at or near their place of work. This is consistent with the objectives of Policy GS8B (a saved policy within the Barnsley Unitary Development Plan) which indicates that proposals for agricultural workers dwellings within rural and green belt areas will only be permitted where essential need, to sustain a demonstrably viable agricultural or forestry enterprise, can be shown.

Criteria (a) of Policy GS8B details that agricultural workers dwellings will only be permitted where essential need, to sustain a demonstrably viable agricultural enterprise, can be shown.

Dairy Enterprise

In recent years there has been a concerted effort by Government to increase the Welfare Standards that apply to all livestock with the Welfare of Farmed Animals Regulations being issued in 2000 and updated and replaced by the Welfare of Farmed Animals Regulations 2007 as of the 1st October 2007. These Codes apply to all livestock and place the responsibility for the welfare of the livestock firmly on

the 'keeper', i.e. 'the person responsible for or in charge of animals whether on a permanent or temporary basis.' The Codes also go on to confirm that under The Welfare of Farmed Animals (England) Regulations 2007, Schedule 1, paragraph 1 states that: 'animals shall be cared for by a sufficient number of staff who possess the appropriate ability, knowledge and professional competence.

It is an offence under the Welfare of Farmed Animals (England) Regulations 2007 to cause unnecessary pain or unnecessary distress to any livestock. The basic requirements for the welfare of livestock are a husbandry system appropriate to the health and, so far as practicable, the behavioural needs of the animals and a high standard of stockmanship. Stockmanship is a key factor, because no matter how otherwise acceptable a system may be in principle, without competent, diligent stockmanship, the welfare of the animals cannot be catered for. The aim of the current Welfare Codes is to encourage all those who care for animals to follow the highest standards of husbandry. Without good stockmanship, animal welfare can never be properly protected. The Code is considered within a framework that was developed by the Farm Animal Welfare Council and known as '**The Five Freedoms**' which are:

Freedom from thirst and hunger – by ready access to fresh water and a diet to maintain full health and vigour;

Freedom from discomfort – by providing an appropriate environment including shelter and a comfortable resting place;

Freedom from pain, injury or disease – by prevention or rapid diagnosis and treatment;

Freedom to express normal behaviour – by providing sufficient space, proper facilities and company of the animals' own kind;

Freedom from fear and distress – by ensuring conditions and treatment which avoid mental suffering.

The Welfare Code for Cattle details further recommendations that should be adhered to and places an additional responsibility on the stock keeper to ensure that animal welfare is adequately managed.

The dairy herd, which is the main enterprise on the farm, are a high quality and high yielding herd, and to maintain the standards that have been set, management input needs to be of the highest quality.

Dairy farms are notoriously labour intensive and require experienced labour to be on hand at all times in order to maintain a high level of efficient husbandry and welfare.

A system of twice a day milking is twice a day at Dovecote Farm starting at 6.30am and finishing at 6.30pm 7 days a week 365 days a year. All year young calving is undertaken.

Any problems, e.g. with herd health, calving, security, or feed problems, that are identified need to be acted in a timely manner so that they do not develop into emergencies with more serious consequences. Observing and attending to the dairy cows to detect the onset of calving, to enable prompt treatment and assistance where necessary is essential to prevent losses. Cows are calving throughout the year, and it is often at this time when the uncertainty of the event can require more than one person to attend to a cow or heifer, and as the herd numbers increase as proposed, so will the need to respond quickly. Observing and attending to the dairy cows to detect the onset of calving, to enable prompt treatment and assistance where necessary to prevent losses.

Attending to young calves (up to the age of 3 months) whilst housed is constantly required, to detect health and feed problems and ensure immediate treatment in order to minimise animal distress, disease spread and prevent losses. This is a high performing pedigree dairy herd. To maintain such levels of performance requires constant attention to detail. Being a closed herd, high levels of bio-security are also required to maintain herd health. It is therefore important for the proper functioning of the business for a further qualified and experienced worker to be available on site at most times.

Whilst it is acknowledged that a proportion of the labour requirement comprises routine duties, there is still a huge amount of out of hours inspection work and when cows are calving it is always better and often essential for two people to assist. It is not safe, good practice or indeed often possible for one person on his own to separate a calving cow from the remainder of the herd and assist it to calve if it is having difficulties.

This has never been an issue in the past as the Mr Richardson (senior) and his sons have all lived in the farmhouse and have been able to assist with out of house emergencies and to carry out night time inspections and investigate noises if one of the family have been away or not available.

As detailed above in Section 4 – Labour, based on standard methodology taken from The Agricultural Budgeting & Costing Book – 81st Edition, this indicates that the amounts to a need of 2.43 full-time workers on the livestock operations alone and a need of 2.84 full-time workers on the whole farming. The applicant intends to increase the dairy herd to 150 cows which will increase the need to 3.23 full-time workers on the livestock operations alone.

Presently, the applicant (who lives on the farm) and his brother (who also lives on the farm) are the only two full-time workers who care for livestock. The applicant's father and mother also live in the farmhouse, with the applicant's father (aged 75 years old) retired and the applicant's mother working in connection with the cattery enterprise.

Care of the livestock may (and does) require workers to be available at short notice throughout the day and night for a variety of reasons. This includes the fact that calving takes place throughout the year, that young animals need constant attention, that artificial insemination needs to take place within a very narrow timeframe, and that emergency situations arise such as when animals are sick or distressed. As such, there needs to be a rural worker within close proximity of the farm to respond to these events as they arise. Considering the scale of the business, I am of the opinion that an individual worker would not always be able to deal with these situations alone and therefore a need exists for more than one full-time worker to reside at or near to the farm.

The Health and Safety Executive (HSE) detail that handling cattle always involves a risk of injury from crushing, kicking butting or goring. The risk is increased where this work involves newly calved cattle and many incidents involving cattle happen to people beyond normal retirement age, when they are less agile. The HSE state that farmers should carefully consider the risks before anyone over 65 years old works with cattle.

On average two workers are killed and over 100 injured every year by cattle.

Sheep Enterprise

The sheep enterprise is a subsidiary enterprise on the farm holding and comprises sheep overwintered on the farm, for which the applicant is responsible for the welfare of.

The essential need requirements include inspections twice daily and responding to any emergencies (ie draft sheep, escaped sheep, dog attacks, etc).

Cattery Enterprise

The cattery enterprise generates its own set of functional requirements and these are as detailed below;

The cattery enterprise provides accommodation for up to 30 cats. The applicant together with the enterprises clientele see animal welfare as a priority and this is guaranteed by the on-site presence of a suitably qualified and experience person 24 hours a day. The Council's licence for the enterprise requires this whenever animals are boarded.

The enterprise is managed by Mrs Richardson (senior) on a full-time basis. Mrs Richardson works from full-time all year round and intermittently throughout the night depending on the needs of the cats

that are boarding. The pens are cleaned on a daily basis. There are two main pieces of legislation that concern catteries, namely; the Animal Boarding Establishments Act 1963 and the Animal Welfare Act 2006.

The Animal Establishments Act 1963 details that the local authority will confirm that the animals are visited at suitable intervals and appropriate steps are taken for the protection of animals in the case of fire or other emergency.

Furthermore, the CIEH Model Licence Condition and Guidance for Cat Boarding Establishments 2013 details that it is strongly recommended that the cattery proprietor or a responsible person lives on site or a key-holding must live within a reasonable distance of the cattery and that the proprietor or a responsible person should always be present to exercise supervision and deal with any emergencies whenever cats are boarded at the premises.

The Council have previously confirmed that there is an essential need for a full-time worker to be readily available, however, they are of the view that this essential need can be met by a dwelling in a nearby village. The continued success of the farm business is dependent on at least one worker being resident on site at most times to meet the needs of the dairy enterprise. It is emphasised that a rural worker would need to be within immediate sight and sound of the farm in order to detect emergency situations and respond immediately. It is also considered that when there is snow and ice on the lanes, it may be difficult to reach the farm and these are the occasions when emergency situations are most likely to occur. Therefore, despite there being some housing availability relatively close to the site, I consider that in this case there is a requirement for a further dwelling for a key worker to be resident at Dovecote Farm itself. This would accord with the approach taken by a Planning Inspector in Devon on a similar scenario APP/Y1138/A/13/2200238.

The existing occupier of the farmhouse at Dovecote Farm, Mr Maurice Richardson is retired from the farm business and Mrs Richardson continues to run the cattery business, a position which reflects the findings in *Keen v Secretary of State for the Environment and Aylesbury Vale District Council* ([1996] JPL), an approach confirmed in *J R Cussons and Son v Secretary of State for Communities and Local Government* ([2008] EHC 443. The judgements make it clear that it is necessary to test whether there is accommodation which is both suitable and available. Where there is existing accommodation (ie the farmhouse at Dovecote Farm), it must be subject to scrutiny as to whether it can reasonably be held to be available. In accordance with the *Keen* decision, the existing farmhouse is not available since it would be unreasonable to expect the existing occupier to vacate his home in order to retire and also there is a requirements for Mrs Richardson to be onsite to meet the needs of the cattery enterprise. This would accord with the approach taken by Planning Inspectors (Appeal References: APP/N6845/A/09/2106131, APP/V3310/A/09/2118524 & APP/W9500/A/08/2087370).

The proposal is therefore considered to accord with criteria A.

Criteria (b) of Policy GS8B details that permission will not normally be granted for a new agricultural workers dwelling in cases where a farm dwelling has recently been or is to be separated from the agricultural land.

No farm dwellings have been or are to be separated from the agricultural land. Therefore criteria B is considered to be met.

Criteria (c) of Policy GS8B details that where new dwellings are accepted solely on the basis of an agricultural need, the size of the dwelling should be in proportion with the established functional requirement.

The proposed dwelling is understood to have a floor area of 158 sq. m which is considered to accord with criteria C.

Criteria D of Policy GS8B details that where new agricultural workers dwellings are permitted they shall normally be sited adjacent to existing or proposed farm buildings.

The proposed dwelling is located to the west of the farmstead, adjacent to the existing farm buildings and therefore accords with criteria D.

Criteria E of Policy GS8B details that where new dwellings are permitted they should be constructed using materials appropriate to the locality, to safeguard the visual amenities of the countryside.

The proposed materials to be used would be Ibstock Cheshire Weathered Facing brickwork and flat dark grey/blue roof tiles and therefore accords with criteria E.

Criteria F of Policy GS8B details that where planning permission is granted for an agricultural workers dwelling, a condition will be imposed restricting the occupancy to a person solely or mainly working, or last working, in the location in agriculture or a widow or widower of such a person, and to any resident dependants.

The applicant is aware of this and expects that a condition will be applied to the proposed dwelling and therefore accords with criteria F.

Criteria G of Policy GS8B details that where permission is granted on the basis of agricultural need, for an additional dwelling on a farm unit, than an occupancy condition will also be imposed on any existing dwelling on the unit which is under the control of the applicant, and is needed at the time of the application to be used in connection with the farm.

The applicant is aware of this and expects that a condition will be applied to the existing dwelling and therefore accords with criteria G.

8 Conclusion

The applicant is a genuine local young farmer who is committed to farming the land and herd in keeping with high modern standards of animal welfare and environmental concerns.

The applicant's family have farmed at Dovecote Farm since the 1930's and in the last few years have invested heavily in the expansion of the farm business including the purchase of the freehold interest of the farm.

There is no doubt that there is an essential need for the applicant to live on site to meet the needs of the farm business and it is considered that the existing farmhouse is unavailable to meet an essential need as the dwelling is occupied by the applicant's father who is retired and his mother who is on site to meet the needs of the cattery enterprise, which accords with the approach taken in the *Keen* and *Cussons* judgements.

Furthermore, even if the Council are of the view that the existing farmhouse is available to meet the needs of the farm unit, due to the number of livestock on site and the level of welfare undertaken it is considered that there is a requirement for two workers to be resident on site in connection with the farm business.

In our opinion the erection of a permanent agricultural workers dwelling at Dovecote Farm, Barnburgh in associated with the farming business of the applicant is not only appropriate and allowable development in planning terms. It is also absolutely essential for the ongoing success and development of the farm business.

This report has been carried out by David J Davenport BSc (Hons) MRICS FAAV



D J Davenport MRICS FAAV

For and on behalf of Carter Jonas LLP

Date of Report: 14 October 2016

Reference: DJD/J00035

Carter Jonas

Appendix 1

*Keen v Secretary of State for the Environment and Aylesbury Vale District
Council ([1996] JPL),*



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England and Wales High Court (Administrative Court) Decisions

You are here: [BAILII](#) >> [Databases](#) >> [England and Wales High Court \(Administrative Court\) Decisions](#) >> JR Cussons & Son v Secretary of State for Communities and Local Government & Anor [2008] EWHC 443 (Admin) (20 February 2008)

URL: <http://www.bailii.org/ew/cases/EWHC/Admin/2008/443.html>

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CO/8706/2007

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT

Royal Courts of Justice
Strand
London WC2
20th February 2008

Before:

MR JUSTICE SULLIVAN

JR CUSSONS & SON

Applicant

-v-

SECRETARY OF STATE FOR COMMUNITIES
AND LOCAL GOVERNMENT

First
Respondent

NORTH YORK MOORS NATIONAL PARK
AUTHORITY

Second
Respondent

(Computer-Aided Transcript of the Palantype Notes of
Wordwave International Limited
A Merrill Communications Company
190 Fleet Street London EC4A 2AG
Tel No: 020 7404 1400 Fax No: 020 7831 8838
Official Shorthand Writers to the Court)

Mr Timothy Hartley (instructed by Messrs Pinkney Grunwells Lawyers LLP, Scarborough YO11 1TS)
appeared on behalf of the Applicant

Ms Lisa Busch (instructed by Treasury Solicitor, Planning Section, One Kemble Street, London WC2B

4TS) appeared on behalf of the First Respondent

HTML VERSION OF JUDGMENT

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1. MR JUSTICE SULLIVAN: This is an application under section 288 of the Town and Country Planning Act 1990 for an order quashing the decision of an inspector appointed by the first respondent. The inspector's decision is contained in the decision letter dated 23rd August 2007, following a hearing on 14th August 2007 and a site visit on the same day.
2. The inspector dismissed the applicant's appeal against the second respondent's refusal to grant planning permission for the change of use of an existing office/washroom/store at Howdale Farm, Fylingdale, Robin Hood's Bay, Whitby, to a dwelling for the accommodation of an additional agricultural worker.
3. The applicant's farming enterprise is run by Mr Cussons senior, who is now 60 years old, and his son in partnership, with the assistance of the wife of Mr Cussons senior. It was common ground that the agricultural enterprise was financially viable and likely to remain so.
4. The applicant's agricultural holding comprises three farms: Howdale Farm, where the appeal site is located; Bridge Farm, about half a mile to the north; and Woodside Farm, which is some 2 miles to the south-west on the other side of the A171 Road. The inspector described the farming enterprise as:

"... essentially livestock, primarily cattle but with some sheep, and totals some 110 hectares, about half of which is located at Woodside Farm."
5. There were 130 suckler cows, accordingly to an agricultural report in evidence before the inspector, and calving took place at both Woodside and Howdale Farms. There were also some breeding ewes, which it seems were at Woodside Farm.
6. In paragraph 8 of the decision letter the inspector said:

"On Bridge Farm is located the main farmhouse, a 4-bedroom dwelling granted planning permission some 20 years ago; outline planning permission for a 3-bedroom house at Woodside Farm, together with the temporary siting of a residential caravan, was granted on appeal in July 2006."
7. Woodside Farm was first rented by the applicant in 2000 and was purchased by the applicant in 2003. At the time of the hearing Mr Cussons junior either had just moved or was just about to move out of the farmhouse at Bridge Farm, where he had lived with his parents, to Woodside Farm, leaving Mr Cussons senior and his wife in the farmhouse at Bridge Farm.
8. The inspector said in paragraph 18:

"I note that the indoor accommodation for the livestock is split between the 3 sections of the holding, with the larger facilities being located at Howdale and Woodside Farms. With the existing house at Bridge Farm and the outline planning permission for a dwelling at Woodside Farm close supervision in relation to the needs of animal husbandry can be available at those sites. It is contended that similar supervision is required at Howdale Farm, and that it is not possible to provide cover from persons resident on the other sites."
9. In its statement for the hearing the second respondent had contended that there was no need for a third dwelling because, in summary, it considered that there was no need for an additional agricultural worker. There was therefore a need for only two dwellings, for two agricultural workers, and that need was being met by the farmhouse at Bridge Farm and the planning permission at Woodside Farm.
10. The applicant contended that there was a need for an additional worker.

11. On behalf of the first respondent, Ms Busch accepts that the inspector found that there was such a need. In paragraph 13 he said:

"In relation to the first issue I understand that the holding is operated by the Appellants with the help of Mrs Cussons. Statistical calculation of the labour requirements would indicate a need for perhaps 3 standard labour units [SLU] for the current level of activity. Due to ill-health Mr Cussons Senior seeks to take a less active part in the physical activities of the enterprise."

In paragraph 20 he said:

"I accepted that, on the basis of the calculation of SLU, additional labour may be required in order to operate the holding effectively in the light of the reduced input from Mr Cussons Senior. However, the fundamental questions are whether it is essential for that additional labour to be resident on the holding, and whether additional housing is required."

12. That need having been accepted by the inspector, he had to consider at the hearing an issue which the second respondent had not addressed: was there a requirement for the additional worker to be accommodated at Howdale Farm?

13. The inspector said this in paragraphs 14 and 15 of the decision letter:

"14. It has been argued that the nature of the stock-rearing activity requires close supervision of the animals especially during calving and lambing — which can occur over some 6 months of the year. It is contended that this requires an additional worker to live close to the livestock accommodation. While accepting the desirability and convenience of such an arrangement, national and local planning policy require that the need is essential. I am aware that many livestock farms operate without all workers being resident on the holding.

15. Mr Cussons Senior's medical condition has, according to the information supplied, been a factor since 1999 and in the intervening period the holding has operated successfully without someone resident at Howdale Farm. Even after the initial renting and subsequent purchase of the land at Woodside Farm, and the erection of livestock buildings there, the enterprise operated effectively with no one at Howdale Farm."

14. The inspector referred to 1999 because in that year planning permission had been refused on appeal for the use of the appeal building for residential purposes.
15. The inspector's decision letter noted that there had been a history of enforcement action in respect of the appeal building, culminating in an appeal decision in 1997 upholding an enforcement notice which had required the cessation of the use of the building for residential purposes, with the removal of all residential fixtures, fittings and furniture.
16. In paragraph 8 of the 1999 decision, dated 22nd June 1999, the inspector had said:

"For the appellant, it was submitted that only on-site living accommodation at Howdale would meet the needs of the enterprise. However, the Authority was able to demonstrate to my satisfaction that a combination of living accommodation at Bridge Farm and the continued authorised use of the appeal building as an office to provide occasional warmth and shelter in winter conditions would adequately meet the needs of the enterprise as it now operates. Although the track between Bridge and Howdale Farms is in places steep and narrow, it is only some 10 minutes' walk uphill and clearly far quicker by vehicle. The Authority's undisputed evidence is that this would not be an uncommon situation on farms, even where there was no on-site office available. Moreover, the use of additional surveillance, such as CCTV appears practical in that only those few cows closest to calving at any one time need the closest attention."

17. The inspector dealing with the 1999 appeal also noted, in paragraph 10 of that decision letter:

"The ADAS appraisal places particular emphasis on the personal skill of the appellant as

11. On behalf of the first respondent, Ms Busch accepts that the inspector found that there was such a need. In paragraph 13 he said:

"In relation to the first issue I understand that the holding is operated by the Appellants with the help of Mrs Cussons. Statistical calculation of the labour requirements would indicate a need for perhaps 3 standard labour units (SLU) for the current level of activity. Due to ill-health Mr Cussons Senior seeks to take a less active part in the physical activities of the enterprise."

In paragraph 20 he said:

"I accepted that, on the basis of the calculation of SLU, additional labour may be required in order to operate the holding effectively in the light of the reduced input from Mr Cussons Senior. However, the fundamental questions are whether it is essential for that additional labour to be resident on the holding, and whether additional housing is required."

12. That need having been accepted by the inspector, he had to consider at the hearing an issue which the second respondent had not addressed: was there a requirement for the additional worker to be accommodated at Howdale Farm?

13. The Inspector said this in paragraphs 14 and 15 of the decision letter:

"14. It has been argued that the nature of the stock-rearing activity requires close supervision of the animals especially during calving and lambing — which can occur over some 6 months of the year. It is contended that this requires an additional worker to live close to the livestock accommodation. While accepting the desirability and convenience of such an arrangement, national and local planning policy require that the need is *essential*. I am aware that many livestock farms operate without all workers being resident on the holding.

15. Mr Cussons Senior's medical condition has, according to the information supplied, been a factor since 1999 and in the intervening period the holding has operated successfully without someone resident at Howdale Farm. Even after the initial renting and subsequent purchase of the land at Woodside Farm, and the erection of livestock buildings there, the enterprise operated effectively with no one at Howdale Farm."

14. The inspector referred to 1999 because in that year planning permission had been refused on appeal for the use of the appeal building for residential purposes.
15. The inspector's decision letter noted that there had been a history of enforcement action in respect of the appeal building, culminating in an appeal decision in 1997 upholding an enforcement notice which had required the cessation of the use of the building for residential purposes, with the removal of all residential fixtures, fittings and furniture.
16. In paragraph 8 of the 1999 decision, dated 22nd June 1999, the inspector had said:

"For the appellant, it was submitted that only on-site living accommodation at Howdale would meet the needs of the enterprise. However, the Authority was able to demonstrate to my satisfaction that a combination of living accommodation at Bridge Farm and the continued authorised use of the appeal building as an office to provide occasional warmth and shelter in winter conditions would adequately meet the needs of the enterprise as it now operates. Although the track between Bridge and Howdale Farms is in places steep and narrow, it is only some 10 minutes' walk uphill and clearly far quicker by vehicle. The Authority's undisputed evidence is that this would not be an uncommon situation on farms, even where there was no on-site office available. Moreover, the use of additional surveillance, such as CCTV appears practical in that only those few cows closest to calving at any one time need the closest attention."

17. The inspector dealing with the 1999 appeal also noted, in paragraph 10 of that decision letter:

"The ADAS appraisal places particular emphasis on the personal skill of the appellant as

proximity to the animals at Howdale Farm who could look after their needs, because he considered in paragraphs 24 and 25 three methods by which that might be achieved by the additional worker. Howdale Farm, according to the agricultural reports before the inspector, is in a remote location. There is no discussion in the documentation of available alternative accommodation away from the immediate vicinity of Bridge Farm/Howdale Farm.

26. In paragraphs 24 and 25 of the decision letter, the inspector said this:

"24. I also accept that it is not appropriate to require Mr Cussons Senior to surrender occupation of the house at Bridge Farm in order to accommodate an additional worker. However, national and local policy requires that alternatives to an additional dwelling should be investigated. From my site inspection I noted that the house at Bridge Farm is quite large and that it could accommodate, permanently or temporarily as needed, an additional worker, certainly now that Mr Cussons Junior is resident at Woodside Farm. While this may not be appealing to Mr and Mrs Cussons it is not unknown for an additional worker to be accommodated in this way.

25. In addition the appeal premises themselves could provide temporary accommodation for a worker at those specific times when close animal supervision is essential. I also understand that the original farmhouse at Howdale Farm has been vacant for some time, but I have no evidence that the possible rental or purchase of that dwelling has been investigated."

27. In respect of the first of those three suggestions, Mr Hartley submitted that the inspector fell into the same error that caused the inspector's decision letter to be quashed in Keen v Secretary of State for the Environment [1996] 2 PLR 8, a decision of Sir Graham Eyre QC, sitting as a deputy High Court judge. In that case the applicant was a part-time farmer who proposed to withdraw from farming. He wanted to employ a full-time stockman, for whom he required a dwelling. The inspector accepted that there was a need for an agricultural worker, and that the financial and functional tests set out in Annex E to PPG 7 had been met, but he dismissed the appeal against a refusal of permission to erect an agricultural dwelling on the grounds, *inter alia*, that the applicant had failed to show an agricultural need because of his existing dwelling. What the inspector had said was:

"I have no doubt that it would be possible for your client and his wife to meet the requirements of the enterprise by making the house or part of it available, if only at the most critical time of year, to whomever is appointed to take over responsibility for the stock. ...

I appreciate that moving from Brookside Farm, or adapting the property so that part could be made available to an employee could result in substantial inconvenience or financial loss, and any adaptation of the house might itself require planning permission, depending on what was proposed." (see page 14)

28. Sir Graham Eyre said on pages 17 to 18:

"The effect is to require a part-time farmer, who has built up a successful and still expanding agricultural enterprise, on which animals require skilled on the spot care and where the need for a full-time specialist stockman living on or very close to that enterprise is not in dispute, to move out or share his imposing and spacious four-bedroom family house in order to accommodate that stockman. Having established the need, it is reasonable to expect clear-cut planning reasons as to why it should not be met in the way proposed unless other available and suitable accommodation exists. ...

I seek to identify with a little more precision the respects in which I believe the inspector has gone wrong. The policies require that in order to test the need the question whether there exists accommodation which is both suitable and available must be answered. Accommodation may *de facto* exist but its availability and suitability must be subjected to some scrutiny. The decision letter does not disclose the basis upon which this exercise was carried out. While purporting to acknowledge the approach in para 6, the inspector fails to gather the relevant information and identify the considerations on which he relies. There is no material disclosed in the decision letter as to whether, applying the ordinary canons of commonsense, the house or any part of it was or would be available as a matter of fact. As I have indicated, its mere existence cannot suffice. What other

demands are being made or are likely to be made on it? Nor is there any material or any sufficient material to justify a conclusion, which *prima facie* flies in the face of good sense, that a house of this kind is suitable. Relevant unanswered questions abound. Is it really to be expected that, in the circumstances where a clear need has been established, the applicant must leave his house and presumably buy another house elsewhere for his wife and family? How are the sharing operations to operate in reality in the various hypotheses that the stockman may be single, married or married with children. Does the house lend itself to sharing? What is the position with regard to common use of the bathroom facilities and kitchen accommodation? Does the house reasonably lend itself to adaptation? I have only given some indication of the multiplicity of matters that would require rational consideration."

29. While it is true that the inspector in this case recognised that it was not appropriate to require Mr Cussons senior to surrender occupation of his house, his suggestion that it is quite large and could accommodate permanently or temporarily as needed an additional worker suffers from the same deficiencies as the inspector's decision in the Keen case.

30. In a witness statement, belatedly filed on 11th February 2008, the inspector explained that:

"The possible use of Bridge Farm to accommodate an additional worker temporarily or permanently was raised by me at the site visit. Mr Cussons' response was that he did not want to use the property and thought it unreasonable and that Bridge Farm was too far away to provide close supervision. However, the ability of Bridge Farm to provide accommodation to satisfy the need to supervise stock at Howdale Farm was a feature in the case for the [local planning authority] and indeed had been asserted by Mr Cussons when an application was made for planning permission for the dwelling of Bridge Farm."

31. I merely note that that assertion by Mr Cussons had been some 20 years previously, when physically he was able to deal with operations at Howdale Farm from Bridge Farm. Plainly circumstances had changed since then.
32. For the reasons given by Sir Graham Eyre, if the suggestion in paragraph 24 of the decision letter was to be relied on, then there was a need to explore the practicalities of that suggestion in greater detail. If what was being proposed was conversion or adaptation of Bridge Farm to provide a further dwelling house for permanent occupation, then that use of a single dwelling house as two dwelling houses would require planning permission, for example.
33. Part of the difficulty stems from the uncertainty, on a fair reading of the decision letter, as to the extent to which the inspector did or did not accept the claimant's case that the additional worker was required to be on hand to deal with the animals at Howdale Farm. The difficulty is illustrated by the second suggestion that the appeal premises themselves could provide "temporary accommodation for a worker at those specific times when close animal supervision is essential."
34. It is one thing, as was the position in 1999, for Mr Cussons senior living at Bridge Farm to walk down the track and make occasional use of the office in the appeal building for emergencies. It is another to suggest that the additional worker, who would presumably be living elsewhere, would use the appeal building on a "temporary basis". As Mr Hartley pointed out, that suggestion begs the question of how "temporary" would such a use be. There was evidence before the inspector as to the needs of the cattle. In an agricultural appraisal that had been prepared for the purposes of the appeal in respect of Woodside Farm, the business insofar as it involved the keeping and breeding of cattle to provide high quality beef for a local wholesaler was described:

"Looking after cattle, particularly when calving, and particularly on an upland farm, where the elements are often against you, and where urgent action is often required much more quickly, is clearly established as satisfying the functional need.

With cattle being kept inside for calving during the period October through to May, the bulls being kept inside all year round, and the local working hours throughout the summer months, when all cattle still need checking twice a day, the functional need lasts throughout the year.

It is well known that when looking after cattle, particularly during calving times, it is essential to inspect stock last thing at night and first thing in the morning and often

throughout the night. It is also considered good practice to continue with this level of management when looking after finishing cattle.

Being within earshot of the animals not only makes it more convenient when going out to inspect stock at all hours, but also assists as stock in distress usually make noise which then alerts the stockman to investigate the cause of the noise. ..."

35. There was also a letter from a vet which appears to have been written in connection with an earlier appeal, which said:

"The Cussons have been clients of our veterinary practice for a number of years. They currently run one hundred and thirty suckler cows between the two farms at Wragby [Woodside Farm] and Howdale. During calving time cows need almost continuous observation to spot any problems before they become too advanced and this would be greatly facilitated by a property at the farm buildings at Wragby. The Cussons currently travel back and forwards to provide this observation as the farm at Howdale does not have sufficient capacity for 130 cows and calves. It is against government welfare guidelines to transport cows within 72 hours of calving so it is not possible to keep moving cows as they calve to create more space. Cattle tend to live in groups with a regimented social structure and it is wise not to move cows between groups once this is established as it leads to fighting and bullying.

... I believe it is in the interest of the welfare of all stock to have as near continuous observation as possible to spot disease and injury as quickly as possible and to provide feed, water and bedding as often as possible."

36. If that evidence as to the needs of the animals was accepted, and there is no indication that it was not, it is not clear what the inspector had in mind when he referred to the provision of temporary accommodation at specific times when close animal supervision was essential. In his witness statement the inspector says:

"This issue was in fact raised and examined at the hearing, and the [local planning authority] agreed that temporary use for occupation, while needed for livestock supervision outside usual working periods during calving and lambing, could be acceptable. The appeal building which is described as an office/store/general purpose building, contains a fully fitted kitchen, a fully fitted bathroom, together with five further rooms. All the interior walls are plastered. The [local planning authority] had also previously taken enforcement action against use of the building for permanent residential occupation and an appeal had been dismissed."

37. Mr Hartley pointed out that this somewhat tentative and presumably non-binding statement by the local planning authority that some form of "temporary use" "could" be acceptable certainly required further exploration before it could be relied upon. After all, the local planning authority had taken enforcement action to prevent the residential use of the appeal building, so presumably any temporary use would have to be very temporary indeed, if it was not to revive the local planning authority's objections. There is no indication as to whether such a temporary use would be sufficient to meet the needs of the animals over the calving period between October and May, as described in the evidence dealing with that issue.
38. This question would have to be addressed bearing in mind the fact that although Mr Cussons senior would continue to live at Bridge Farm, he had given evidence that, for medical reasons, he would not be able to attend the animals outside normal hours while they were calving.
39. Thirdly, in respect of the suggestion that the original farmhouse at Howdale Farm could be considered the inspector said in his witness statement:

"The availability of the original Howdale Farm was specifically raised by me during the hearing. Mr Cussons' response was that he did not get on with the current owner. Clearly, no attempt had been made to clarify the possible availability of the premises, even though they were vacant."

40. Again, this was a matter that if it was to be relied on required further exploration, even if it was not

possible to resolve the matter. If Mr Cussons senior did not get on with the current owner, then there was at least a prospect that the current owner would not be prepared to either rent or sell that property to the applicant, in which case it would not for practical purposes be available.

41. Ms Busch submitted, in essence, that these difficulties were entirely due to the applicant and to the manner in which the applicant had advanced his case. The inspector was simply responding to the way in which the applicant was arguing his appeal. I accept that there is some force in that submission. It is plain that the inspector had to deal with a new situation "on the hoof" during the course of the hearing and at the site visit. He had to do that because the second respondent had not addressed the question where a third worker might need to be accommodated because it had not accepted that there was a need for a third worker, and had contended that the three farms could continue to be managed from Bridge Farm and Woodside Farm.
42. However, once the need for a third agricultural worker was accepted, the question whether that worker needed to be accommodated at Howdale Farm had to be addressed. If Mr Cussons senior's description of his own medical condition was accepted, then he, as a 60-year-old on medication after a double heart bypass operation, could no longer reasonably be expected to look after the stock at Howdale Farm from his home at Bridge Farm. I do not suggest that the inspector was required to accept that evidence, but there needed to be clear findings as to whether it was accepted and, given the acceptance of the need for the third agricultural worker, clear findings, if the claimant's contention was not accepted, that the animals' welfare, bearing in mind Mr Cusson senior's health, could be adequately looked after by the additional worker on a non-resident basis.
43. It appears to be implicit in the decision letter that the inspector accepted that the additional worker was required to be on or in close vicinity to Howdale Farm, because he then went on to consider three ways in which that might be achieved.
44. Once those issues were raised, the inspector had to grapple with them. In my judgment, the reasoning in the decision letter does not adequately respond to the situation which confronted the inspector once he had accepted, contrary to the second respondent's case, that there was indeed a need for an additional agricultural worker on the holding. There was a large number of livestock to be looked after at Howdale Farm. Given that Mr Cussons junior was now at Woodside Farm, and in the light of the evidence of Mr Cussons senior as to his health, who was going to look after them, and could that person do it effectively if they were not in reasonable proximity to Howdale Farm? These questions, in my judgment, are not adequately answered in the decision letter.
45. It follows that the decision letter must be quashed on the ground of inadequate reasons.
46. For completeness, I should mention that Ms Busch submitted that the applicant's challenge was academic because there was a second reason for refusal in paragraph 29 of the decision letter. In that paragraph the inspector said this:

"In relation to the effect of the proposed change of use on the character and appearance of the landscape of the National Park, I recognise that the building exists and in many ways presents the appearance of a residential dwelling. Nevertheless I consider that permanent residential occupation would have an impact, particularly in relation to the miscellaneous structures and activities commonly found in and around dwellings. Such increased domestication of the local landscape would be readily visible from the public rights of way in the area, especially that which passes along the lane immediately to the west of the building. I consider that this would be harmful to the more rugged landscape of the National Park and thus fail to comply with Local Plan policies GP1 and F1."

47. Ms Busch submitted that even if the inspector's conclusions as to the lack of an essential need for an additional worker to be resident on Howdale Farm were in some respect legally flawed, then it was plain that the inspector would have dismissed the appeal in any event for that second reason. Thus the court should as a matter of discretion refuse to grant any relief.
48. I do not accept that submission. If the inspector had concluded that there was indeed not merely a need for an additional worker, but an essential need for that worker to be resident on Howdale Farm, then the question would inevitably have arisen: would it be better to use the existing appeal building or to erect new residential accommodation? The impact of the latter on the national park might well be greater than the impact of the former. Whether that would be the case would of course be a matter for the inspector to assess. But it cannot be assumed that the second reason on its own would be

sufficient to justify a refusal of planning permission if there had been a proper analysis of the first issue, namely whether there was an essential need for the additional agricultural worker to be accommodated on the holding.

49. For these reasons, the application succeeds and the decision is quashed.
50. Yes, thank you.
51. MR HARTLEY: My Lord, I would ask for an order for costs.
52. MR JUSTICE SULLIVAN: Yes.
53. MR HARTLEY: My Lord, there should be before your Lordship a statement of costs prepared by those instructing me. If not, your associate has, if it has not —
54. MR JUSTICE SULLIVAN: I think it has just reached me.
55. MR HARTLEY: That must be the copy I gave to your associate earlier.
56. MR JUSTICE SULLIVAN: Yes. It is difficult to read the numbers. £9,129.68, is that what is claimed?
57. MR HARTLEY: Yes, it is, inclusive of value added tax.
58. MR JUSTICE SULLIVAN: Shall we just see what Ms Busch says about principle and the detail.
59. MS BUSCH: My Lord, I accept that and I only have one comment as to the detail of the costs —
60. MR JUSTICE SULLIVAN: Yes.
61. MS BUSCH: — which is about VAT, because one would assume that the solicitors in question are VAT registered.
62. MR JUSTICE SULLIVAN: Is that a fair point, Mr Hartley?
63. MR HARTLEY: If the applicant is VAT registered, as he probably is, my Lord it is a fair point.
64. MR JUSTICE SULLIVAN: Given we are told it is a viable agricultural enterprise and so on, it would be pretty surprising if he was not. I am sure he is very anxious to get his VAT back on all sorts of things.
65. MR HARTLEY: My Lord, I would have thought so. It would be unusual for a North Yorkshire farmer or any farmer.
66. MR JUSTICE SULLIVAN: Can I leave it like this. Would you please and/or Ms Busch work out — have you worked out what the amount is?
67. MR HARTLEY: It is £7,829.58 inclusive of VAT.
68. MR JUSTICE SULLIVAN: I see, nice simple, is it not?
69. So that is a point, is it, Ms Busch?
70. Then the application is allowed; the first respondent is to pay the applicant's costs, those costs are summarily assessed in the sum claimed, less VAT, which is £7,829.50.
71. MR HARTLEY: My Lord, just out of an abundance of caution, would your Lordship say that unless the applicants are not registered for VAT, in which case they should pay the full sum?
72. MR JUSTICE SULLIVAN: Yes. That is perfectly reasonable, is it not Ms Busch, unless they are not registered for value added tax.

73. MR HARTLEY: My Lord, those instructing me I think did seek advice, I meant to mention it earlier, from the Court Office as to whether they needed to be here, and indeed asked me. My Lord, they intended no disrespect to your Lordship, but they were anxious to save costs if possible.
74. MR JUSTICE SULLIVAN: That is quite all right.

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Carter Jonas

Appendix 2

*J R Cussons and Son v Secretary of State for Communities and Local
Government ([2008] EHC 443)*

In this regard the Court of Appeal did not make entirely clear the extent to which an enforcement notice's validity can be challenged on grounds of *Wednesbury* unreasonableness, relevancy and bad faith on an appeal to the Secretary of State. The Court appeared to accept that such matters can be raised on appeal as they stated that "the occupier, knowing it demands action by him personally, is alerted to the opportunity to challenge the notice on appeal or by judicial review." If such matters can be raised on appeal this then allows a further appeal to be taken to the courts by way of section 289 and so the matter can be settled authoritatively by the appropriate body. Nevertheless, this commentator considers that where the defendant can show good reason why he or she did not take that avenue, the argument that the notice is flawed by abuse of power should be able to be raised in the Criminal Courts.

Agricultural workers dwelling—stockman—cubing—PPG 7—functional and financial tests satisfied—need established—part-time farmer—substantial family house—separate planning unit to farm—decision of planning Inspector alleged to be unreasonable and perverse—suggested (inter alia) stockman could share existing dwelling—consideration of authorities on unreasonableness—decision of Inspector quashed.

Keen v. Secretary of State for the Environment and Aylesbury Vale District Council (Queen's Bench Division, Sir Graham Eyre Q.C. sitting as a Deputy Judge, May 12, 1995)*

Outline planning permission was refused for the erection of an agricultural worker's dwelling on land off Long Marston Road, Lower End, Marworth, on the grounds that normal development control policy would only permit the erection of a dwelling on a site beyond the built up limits of the settlement where a need existed from agriculture, that there was no justification for permission for a dwelling adjacent to the farmstead "since the applicant already resides in a dwelling within 100 metres of the farm building", and that the proposal failed to comply with Policy RC14 of the Rural Areas Local Plan Adoption Draft. In addition, it was claimed that the building would be a visually intrusive form of development and would be detrimental to the appearance and character of the rural area.

It was alleged that the agricultural need was not satisfied by the existence of the applicant's dwelling and that, accordingly, there was no house "which is suitable or available to meet the identified agricultural need in this case".

The application for planning permission had been accompanied by a report submitted by ADAS as to the agricultural considerations and the need for residential accommodation on the appellant's farm.

By virtue of the provisions of section 70(2) and section 54A of the Act, the Inspector first considered the development plan policies. The Structure Plan set out a general presumption against development in the open countryside and stated that any new farm building should be sited within an existing group of dwellings unless there were valid reasons for locating it elsewhere. The Rural Areas Local Plan was approaching adoption and required considerable weight. Policy RC1 of that Plan stated, in assessing proposals for development in the countryside, that the most important consideration was the protection of the countryside for its own sake and that development would not normally be permitted unless it was essential for identified countryside activities including agriculture. Policy RC14, provided that permission for a new dwelling for an agricultural worker would normally be granted only where it was necessary and there was no suitable alternative accommodation available. That policy essentially reflected the provisions of PPG 7 "The Countryside and the Rural Economy" which provided a comprehensive and stringent test for the purpose of assessing the need for an agricultural dwelling in the countryside. PPG 7 contained highly restrictive policies to prevent unjustified development outside existing developments whilst recognising that, albeit on a decreasing scale, agriculture remained the

* Mr C. Hooper, Q.C., (Addy & Co., Eng. Menc. Mr C. Karlowitz (the Planning Solicitor).

major user of land in the countryside and that over three-quarters of the total land of England and Wales was used for farming. Development should, as a matter of general approach, benefit the rural economy and maintain or enhance the environment.

It was acknowledged that the countryside could not accommodate many forms of development without detriment and that buildings in the open countryside, away from existing settlements, should be strictly controlled. Paragraph E2 of Annex E to PPC 7, which dealt specifically with agricultural and forestry dwellings, stated:

"There will be some cases, however, in which the demands of the farming or forestry work concerned may make it essential for one or more of the people engaged in this work to live at or very close to the site of their work. Whether this is essential in any particular case will depend on the needs of the farm or forestry enterprise concerned and not on the personal preferences or circumstances of any of the individuals involved."

Paragraph E3 recognised that demand for development in the countryside remained high and exploitation had to be prevented. Applications for planning permission therefore needed to be scrutinised thoroughly with the aim of detecting attempts to abuse the concession that the planning system made for such dwellings. Accordingly, PPC 7 recognised that in assessing applications for new agricultural dwellings, local planning authorities might find it useful to apply what were described as functional and financial tests. E5 stated:

"A functional test will be necessary in all cases to establish whether it is essential for the proper functioning of the enterprise for one or more workers to be readily available at most times. Such a requirement might arise, for example, if workers are needed to be on hand day and night:
— in case animals or agricultural processes require essential care at short notice ..."

Paragraph E8 stated:

"When a functional requirement is established, it will then be necessary to consider the number of workers needed to meet that requirement, for which the scale and nature of the enterprise will be relevant, and the extent to which any existing accommodation in the area is suitable and available for occupation by the workers concerned. When existing accommodation is insufficient, or where none exists, it may be appropriate for planning permission to be granted for one or more dwellings, provided other normal planning requirements, for example on siting and access, are also satisfied. Care should be taken to choose a site which is well related to existing farm buildings or other dwellings. Such dwellings should be of a size commensurate with the established functional requirement. Dwellings which are unusually large in relation to the agricultural needs of the unit, or unusually expensive to construct in relation to the income it can sustain in the long term, should not normally be permitted."

Paragraph E12 stated:

"The functional and financial tests may not need to be applied so rigorously to an application for an additional agricultural dwelling on an established farm, to meet an increased need for accommodation. On the other hand, in cases where the local planning authority is particularly concerned about possible abuse, it may be helpful to investigate the history of the holding to establish the recent pattern of use of land and buildings and whether, for example, any dwelling have recently been sold separately from the farmland concerned. Such a sale could constitute evidence of lack of agricultural need. Local planning authorities should, however, endeavour to minimise the information required of applicants, consistent with the level of scrutiny required in each case."

No detailed examination under those paragraphs was undertaken at the inquiry at all because it was common ground that the appellant's agricultural enterprise and farming operations were such that both the functional and financial tests were met and there was a need for one worker concerned with the livestock based on the land at Long Marston Road to live on or very close to that land.

The Inspector had identified the issue as whether that need justified the erection of the proposed dwelling or whether such need could be met by the applicant's present house in Church Farm Lane. The applicant's house was some 350 metres away from the farm buildings used for calving. The appellant was a part-time farmer who wished to withdraw from the practical side of the farming business although he wished to maintain a general interest in the farming operation. In the past, both he and his son had at times fulfilled the role of stockman. When a cow was close to calving it should not be left through the night without inspection and over the period of calving a conscientious stockman would be expected to get up several times a night to carry out inspections. It was because the appellant wished to withdraw from the practical side of the business that he envisaged the employment of a full-time stockman to manage the herd and live in the proposed agricultural dwelling situated more conveniently less than 150 metres from the calving buildings. The farm enterprise had expanded and continued to expand so that it was becoming more and more difficult to run on a part-time basis. No doubt, all those considerations were taken into account in reaching the agreement that there was a need for a stockman to live on or very close to the farm and buildings. The whole case proceeded on the basis that the need was genuine and beyond reproach.

Whilst the applicant's house was known as Brookside Farm, it was not situated on the holding itself and there was no finding that it was the farmhouse of the farm. Indeed, it stood in a separate curtilage and was a discrete planning unit located in a line lying to the north of Long Marston Road and a property called Little Gammel intervened between the house and the road and the boundary of the holding. It was an imposing and spacious residence with four bedrooms and further accommodation in the roof space. The former integral garage has been converted into an additional living room and a new garage had been added. It was therefore a substantial family house, and the applicant lived and proposed to continue to live at the house with his wife, and with his son. No reference to any other members of the family or the extent to which the house or any part of it was available other than for residential family purposes was made nor a finding as to the extent to which the bedroom accommodation was currently occupied. It was common ground that in the open market the property would command a rent far beyond the means of a stockman but no consideration was apparently given to the prospect that a suitably qualified stockman, prepared to undertake the necessary duties, might be a married man with or without one or more children.

Against that general background the Inspector had rejected the need for the agricultural dwelling. In paragraph 6 the Inspector stated:

"I accept your submission"—that is the appellant's submission—"that this argument should be tested not only in relation to the location of the house, but also in the light of its suitability and availability for occupation by the worker concerned, which are the other criteria mentioned in PPG 7."

In paragraph 8 he stated:

"The questions of whether Brookside Farm is a suitable dwelling to meet the identified need, and whether it is available, arise because the farm enterprise has expanded and continues to expand, so that it is becoming more and more difficult for your client to continue to farm on a part-time basis. I understand that he now wishes to withdraw from the practical side of the business, while

continuing to live in his present house, and envisages the employment of a full-time stockman to manage the herd. It was submitted that, as a spacious detached four-bedroom house, Brookside Farm is not commensurate in size or style with the agricultural need, and the authority accepted that in the open market the property would command a rent far beyond the means of a stockman."

In paragraph 9 he continued:

"It is true that PPC 7 cautions that dwellings permitted in response to an agricultural need should be of a size commensurate with that need and that unusually large or expensive dwellings should not be permitted. However, those comments do not in my view have any bearing on the suitability of an existing house; they are made in the context of the desirability of restricting new building in the countryside, and to my mind their purpose is firstly to minimise the scale—and hence the intrusiveness—of a new dwelling, and secondly to ensure that such a dwelling, once built, remains within the means of someone whose income is derived mainly from agriculture. In respect of the existing accommodation, the PPC advises that permission for an additional dwelling may be appropriate where such accommodation is insufficient, not where it is too large."

Paragraph 10 read:

"Annex E to PPC 7 makes it clear that it is the requirements of the enterprise which are relevant in considering the justification for a new dwelling, rather than those of the owner or occupier; you did not seek to dispute that principle. Accommodation for the person or people responsible for the stock on this holding (your client and his son) has in the past been provided by Brookside Farm. As I saw during my inspection, the house is an imposing and spacious one, with four bedrooms and further accommodation in the roof-space; the former integral garage has been converted into an additional living-room and a new garage added."

"I have no doubt that it would be possible for your client and his wife to meet the requirements of the enterprise by making the house or part of it available, if only at the most critical time of year, to whomever is appointed to take over responsibility for the stock."

In paragraph 12 the Inspector wrote:

"I appreciate that moving from Brookside Farm, or adapting the property so that part could be made available to an employee could result in substantial inconvenience or financial loss, and any adaptation of the house might itself require planning permission, depending on what was proposed."

He then went on to set against those matters the characteristics of the policies identified as justification for the rejection of the proposed agricultural dwelling.

The applicant appealed to the High Court against the refusal of outline permission under section 288 of the 1990 Act.

The Deputy Judge said that the decision was challenged on some five grounds. The first claimed that there was nothing in logic or in policy to make the test of suitability of a dwelling to house an agricultural worker a different one depending upon whether the dwelling was in existence or had yet to be built. Accordingly, the Inspector had failed properly or at all to understand or to apply the policy he sought to apply.

In ground 2 it was alleged that it was unreasonable and/or perverse for the Inspector to decide that a

spacious detached four bedroom house not linked (otherwise than by ownership) with the planning unit, which comprised the operational farm on which the appellant had applied for permission to build a house for a stockman, was suitable accommodation for that stockman.

Next, it was contended that it was unreasonable and/or perverse for the Inspector to conclude that the admitted and identified need for accommodation for a full-time stockman should be met by the appellant and his wife moving out of the matrimonial home to give it over to that worker or sharing the home with that worker and any family he or she might have.

Fourthly, in concluding that the admitted and identified need for accommodation of a stockman and his or her family might be met in the matrimonial home, the Inspector had failed to make any enquiry as to the prospects for obtaining planning permission for converting the same into two separate units of accommodation.

Finally, it was unreasonable or perverse or was a misapplication of the policy contained in PPG 7 for the question of availability of accommodation for a full-time agricultural worker to be answered by reference to a dwelling which was already lawfully and permanently occupied.

Mr Harper, who appeared for the applicant, made no bones about his grounds of challenge and asked the Court to approach the decision with, as he put it, disbelief. In other words, the interpretation of the application of the policy and the results that flowed from it were so perverse that no Inspector, acting reasonably on the material before him, could have come to the decision which the Inspector had reached. He fully appreciated that he was asking the court to surmount a high hurdle but it was appropriate that in this case the court should take that course. The allegation of perversity or *Wednesbury* unreasonableness was often seen but usually it was a makeweight that was seldom pursued and very rarely pursued successfully. Great emphasis, quite properly, was put, on behalf of the Secretary of State, on the very narrow grounds upon which the court might quash a decision under the section. Lord Lowry in the case of *R. v. Home Secretary, ex parte Brind* [1991] A.C. 696, 765, had examined the kind of unreasonableness which would justify a court in setting aside an administrative act or decision and cited a number of dicta from various sources and from various cases. He proceeded to describe those as colourful statements which emphasised the legal framework that judicial review administrative action was supervisory and not an appellate jurisdiction and he identified what he described as:

"A less emotive but, subject to one qualification, reliable test is to ask, 'could a decision-maker acting reasonably have reached this decision?'"

The citation continued:

"The qualification is that the supervising court must bear in mind that it is not sitting on appeal, but satisfying itself as to whether the decision-maker has acted within the bounds of his discretion. For that reason it is fallacious for those seeking to quash administrative acts and decisions to call in aid decisions of a Court of Appeal reversing a judge's finding, it may be on a question of what is reasonable."

It was clear that the relevant part of Lord Lowry's speech was specifically related to the supervisory jurisdiction of the court in relation to administrative acts and the exercise of discretion but, subject to the qualification, he (the Deputy Judge) wholly and respectfully accepted that the principle which was described was appropriate in approaching a case such as the present where the court was exercising an appellate jurisdiction. Indeed, a similar approach was echoed and had been repeatedly followed, at least since *Ashbridge Investments Ltd v. Minister of Housing and Local Government* [1965] 1 W.L.R. 1320, which was concerned with the correct approach only where an appeal lay, as was the case in section 288, in

cases where the tribunal had gone outside the powers of the legislation. At page 1326 Lord Denning M.R. stated:

"The court can only interfere on the grounds that the Minister has gone outside the powers of the Act or that any requirement of the Act has not been complied with. Under this section it seems to me that the court can interfere with an administrative decision if he has acted on no evidence or if he has come to a conclusion to which, on the evidence, he could not reasonably come."

At page 1328, Harman L.J. said:

"If he"—that is the Minister—"could not properly arrive at that opinion on his Inspector's facts, that is law; and strictly speaking the two questions are not mixed at all, they follow one on another. We can interfere if the decision of the Minister was perverse and could not have been properly arrived at on the facts ... but otherwise ... we should not interfere."

That was a case where the Inspector was reporting to the Secretary of State and the Secretary of State was making a decision related to the facts gathered by his Inspector in the report.

There has been a recent reminder in the case of *South Somerset District Council v. Secretary of State for the Environment* [1993] 1 P.L.R. 80. In that case an Inspector had allowed an appeal for housing on a site beyond the development limits of Martock. An application to quash the decision was successful before Sir Frank Layfield Q.C., sitting as a deputy judge of the Queen's Bench Division, on the grounds that the Inspector had misunderstood or failed to have regard to certain policies in existing and draft development plans. The learned deputy judge conducted an exhaustive examination of the various policies he thought should have persuaded the Inspector to a different conclusion. At page 87 Hoffmann L.J. said:

"In my judgment, therefore, an analysis of the decision letter does not show that the Inspector overlooked a relevant policy or misunderstood one in any material respect. His decision was entirely based on what he deemed to be the planning merits. The deputy judge, who has immense experience of town and country planning, may have found the decision surprising. He may well have been right. The appellants may have struck it lucky. But the judge was not entitled to substitute his own views on planning matters for the Inspector's and it seems to me that, in reality, that is what he did. I, therefore, think he was wrong to quash his decision and I would allow the appeal."

In the present case the applicant had struck it very unlucky, but mere disagreement on the part of the court with the conclusion was not enough. Conscious of the limits of his jurisdiction and fully aware that he could not substitute his own views for that of the Inspector, he (the Deputy Judge) set out, with an appropriate sense of reluctance, on the question whether an Inspector, acting reasonably on the material before him, could have reached the decision to which he had come. It seemed to him that the Inspector had rejected the need for the agricultural dwelling on a number of what proved to be unjustifiable and inconsistent hypotheses. The main matter was essentially disposed of in one sentence. The following hypothetical situations appeared to emerge. First, it would be possible for the applicant and his wife to meet the requirement of the enterprise—that was the need for a full-time stockman required to live on or very close to the holding—by making the house available to the stockman thus requiring the applicant to move from his house. Secondly, it would be possible to meet that requirement by making part of the house available to the stockman. Thirdly, giving the decision as

generous an interpretation as he was able, it would also be possible apparently for the stockman to live elsewhere, which would appear to be in direct conflict with the agreed needs supported by ADAS, but have the house or part of it made available to him if only at the most critical time of year.

In his (the Deputy Judge's) judgment, the qualification relating to the most critical time of year gave the lie to appropriate reasonableness in the approach of the Inspector in that a need for a full-time stockman living on or very close to the farm had been established and agreed and the case thereafter proceeded on that basis.

The third hypothesis necessarily ignored the whole basis upon which the case thereafter proceeded. The implications of those findings were also disposed of in one sentence. It was appreciated that moving from the house, presumably altogether, for a period which related to the most critical time of the year, could result in substantial inconvenience or financial loss. It was not clear whether "the sharing concept" involved any adaptation but it was acknowledged that there could be a situation where planning permission might be required without any consideration as to whether it was likely to be forthcoming. It was not recorded in the decision letter itself that, in the circumstances postulated by the Inspector, planning permission would have been forthcoming or that the question had been addressed by the second respondents. As was disclosed during the course of argument, by virtue of section 55(3) of the Act, the use as two or more separate dwellinghouses of any building previously used as a single dwellinghouse involves a material change of use in the use of the building and of each part of it which is so used. Thus one could rule out, as an unrealistic possibility, the necessity for the obtaining of a planning permission in order to realise what was described as the sharing concept.

However, giving due weight to the very restrictive policies relating even to development for agriculture in the countryside set out in the putative development plan and, in particular, PPG 7 which only reflected the situation which had obtained without such detailed guidance for decades, he (the Deputy Judge) could not accept that the policies could be reasonably interpreted and applied with the results ultimately identified by the Inspector. The effect was to require a part-time farmer, who had built up a successful and still expanding agricultural enterprise, on which animals required skilled on the spot care and where the need for a full-time specialist stockman living on or very close to that enterprise was not in dispute, to move out or share his imposing and spacious four bedroom family house in order to accommodate that stockman. Having established the need, it was reasonable to expect clear-cut planning reasons to why it should not be met in the way proposed unless other available and suitable accommodation existed. That position was to be derived from paragraph E8 of PPG 7.

He (the Deputy Judge) then sought to identify with a little more precision the respects in which he believed the Inspector had gone wrong. The policies required that in order to test the need the question whether there existed accommodation which was both suitable and available had to be answered. Accommodation might *de facto* exist but its availability and suitability had to be subjected to some scrutiny.

The decision letter did not disclose the basis upon which that exercise was carried out. While purporting to acknowledge the approach in paragraph 6, the Inspector failed to gather the relevant information and identify the considerations on which he relied. There was no material disclosed in the decision letter as to whether, applying the ordinary canons of common sense, the house or any part of it was or would be available as a matter of fact. As indicated, its mere existence could not suffice. What other demands were being made or were likely to be made on it? Nor was there any material or any sufficient material to justify a conclusion, which *prima facie* flew in the face of good sense, that a house of that kind was suitable. Relevant unanswered questions abound. Was it really to be expected that, in the circumstances where a clear need had been established, the applicant had to leave his house and

presumably buy another house elsewhere for his wife and family? How were the sharing operations to operate in reality in the various hypotheses that the stockman might be single, married, or married with children?

Did the house lend itself to sharing? What was the position with regard to common use of the bathroom facilities and kitchen accommodation? Did the house reasonably lend itself to adaptation? Those were only some of the multiplicity of matters that required rational consideration.

In his judgment, the decision was flawed essentially because it inadequately applied the test of availability and suitability by reference to the probative material disclosed in the decision itself. In the absence of a logical analysis of the questions and answers that he had sought to identify, the conclusion was manifestly unreasonable. Exceptional circumstances would need to be identified in order, on the face of it, to justify it. The decision, therefore, fell into a very special category, that having regard to the considerations, it was one to which, on the material identified in the decision letter, no Inspector acting reasonably could have come.

Application allowed.

Comment. As the Deputy Judge pointed out the argument that a decision-maker has acted irrationally or that his decision was *Wednesbury* unreasonable is a very hard one to make such. This decision therefore stands out as apparently an example of *per* irrationality. The difficulty is that with many of the apparent cases of *Wednesbury* unreasonableness the decision can be explained on more prosaic grounds of improper purposes or irrelevancy. In this regard, in an illuminating article ("The Reasonable Limits of Local Authority Power" [1996] P.L. 244) Sir Robert Gammie has recently pointed out that cases such as *Mitchell v. Lisle City* [1985] A.C. 1054 can be explained not on grounds of unreasonableness but traditional ultra vires. This latter can be justified as case when the Council took into account an irrelevant consideration by taking into account the views of the club managing open space management decisions.

It is, however, harder to fit the present case into the statutory interpretation framework as the Inspector addressed the correct questions. The crucial issue at stake was the Inspector's finding that the existing house owned and occupied by the appellant might be available and be suitable accommodation for a stockman. What the Deputy Judge would appear to be holding is that the Inspector's conclusions did not flow from the evidence before him. In particular Sir Graham Eyre was concerned about the way the decision was influenced by a series of unjustified hypotheses as to how the house could be used by the stockman. In this regard the case fits into Lord Denning's formulation of the grounds of review in *Aldridge v. Minister of Housing* [1965] 3 All E.R. 371. There Lord Denning stated that the court could:

"... interfere with the Minister's decision if he has acted on no evidence; or if he has come to a conclusion to which on the evidence he could not reasonably come."

It is also interesting to consider how far the decision fits into Jowell and Leyer's "substantive principles of administrative law" and in particular the violation of fundamental human rights see their article "Beyond *Wednesbury*: Substantive Principles of Administrative Law" [1987] P.L. 368. Sir Graham Eyre posed the questions "it is really to be expected that in the circumstances where a clear need has been established, the applicant must leave his house and presumably buy another house elsewhere for his wife and family? How are the sharing operations to operate in reality in the various hypotheses that the stockman may be married or married or married with general? These questions not only focus on the lack of any firm evidence that the house would fit the purpose but there is also the suggestion that what the Inspector is suggesting is plainly unreasonable as a gross interference with the appellant's rights."

Appendix 3

Appeal Decision - APP/N6845/A/09/210/6131

Appeal Decision – APP/W9500/A/08/2087370

Appeal Decision – APP/V3310/A/09/2118524

Appeal Decision – APP/Y1138/A/13/2200238



Penderfyniad ar yr Apêl

Gwrandawriad a gynhaliwyd ar 15/09/09

Ymweliad â safle a wnaed ar 15/09/09

Appeal Decision

Hearing held on 15/09/09

Site visit made on 15/09/09

gan/by Rebecca Phillips BA (Hons) MSc DIPM MRTPI MCIM

**Arolygydd a benodir gan
Weinidogion Cymru**

**an Inspector appointed by
the Welsh Ministers**

Dyddiad/Date 23/10/09

Appeal Ref: APP/N6845/A/09/2106131

Site address: Bowlings Farm, Rudbaxton, Haverfordwest, SA62 4DB

The Welsh Ministers have transferred the authority to decide this appeal to me as the appointed Inspector.

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
- The appeal is made by Mr R Llewellyn against the decision of Pembrokeshire County Council.
- The application Ref 08/0796/PA, dated 20 June 2008, was refused by notice dated 22 January 2009.
- The development proposed is agricultural dwelling and alteration to existing access and new access.

Decision

1. I dismiss the appeal.

Procedural Matters

2. The appellant confirmed that the correct site address is Bowling Farm, not Bowlings Farm as it appears on the application form. This is an outline application and includes details of the access. Subject to conditions, these arrangements overcome previous objections raised by the Council's Head of Highways and Construction and I consider that they would be satisfactory. At the Hearing the appellant held that the existing access arrangements are adequate and should be considered. It was also requested that access be considered a reserved matter. However, in the interests of natural justice, I have determined the appeal on the basis of the plans before me. To do otherwise might prejudice the interests of other parties, including the Council's Highways department who were not present, and who may wish to comment.
3. Furthermore, since this application was made, changes to the Town and Country Planning (General Development Procedure) (Amendment) (Wales) Order 2008 (SI 2008/2336) have revised the statutory reserved matters. Article 3 says that where access is a reserved matter, the application shall state the area or areas where the access points will be situated. This is a necessary requirement in order for me to determine the appeal.

4. In addition, where scale is a reserved matter the application shall state the upper and lower limit for the height, width and length of each building included in the development. The submitted location/site plan provides the indicative layout and proposed length and width of the dwelling and it was confirmed at the Hearing that this would be no more than 20m in length and 10m in width. It was also agreed that the dwelling would be single-storey with a maximum height to the ridge not exceeding 5m and that there would be no basement room. I have therefore determined the appeal on this basis and regard layout, scale, appearance and landscaping as matters reserved for subsequent approval.

Main Issue

5. I consider that the main issue in this case is whether there is a justification for an agricultural worker's dwelling in this location.

Reasons

6. *Planning Policy Wales (PPW)* says that new building in the open countryside away from existing settlements or areas allocated for development must be strictly controlled. National guidance on agricultural dwellings is set out in *PPW* and the revised guidance in Ministerial Interim Planning Policy Statement 01/2006 *Housing* and Technical Advice Note (TAN) 6: *Agricultural and Rural Development*. The criteria for housing in the open countryside for agricultural need include a functional test to establish whether, for the proper functioning of the enterprise (in terms of both its current and likely future requirements), one or more workers needs to be readily available at most times. The criteria also include a financial test to establish that the farming enterprise is economically viable.
7. Similarly, Policy 48 of the adopted Joint Unitary Development Plan for Pembrokeshire (JUDP) says that new dwellings in the countryside will only be permitted subject to certain criteria, including that it is for occupation by an agricultural worker and evidence is submitted which demonstrates that it is essential for the person to live at, or very close to their place of work, that there has been no prior disposal of a dwelling which could have been used to meet this need and there is no suitable alternative residential accommodation available in the area or by making use of existing buildings on site.
8. Bowling Farm occupies an elevated open countryside location. The agricultural business has been established since 1957 and extends to approximately 97 ha (240 acres) of owner occupied land comprising arable and livestock enterprises. The appellant has a contract with a neighbouring farmer to manage the livestock which include dairy and dry cows and tack sheep. It is my understanding that this arrangement has been going on for some 25 years. However, the appellant has retired and wishes to remain in his home and to erect a dwelling to accommodate an active farm worker. In the longer term, it is hoped that his grandson will take over the management of the farm.
9. It is accepted by the Council that there is a need for a full-time worker to be present at most times to oversee lambing and calving, which takes place all year round, and to undertake other management and husbandry duties. It is also agreed that the enterprise is economically sound, has been profitable for at least a year and has a clear prospect of remaining so. Turning to whether there is any suitable alternative accommodation in the area, the Council make several points.

Firstly, that there is an existing farmhouse which provides for the needs of the enterprise and that TAN 6 states that it is the needs of the farm enterprise that is paramount and not the personal circumstances or preference of the appellant. Also, that there is a building suitable for conversion at the farm.

10. On the first point, the appellant is retired, a position which reflects the findings in *Keen v Secretary of State for the Environment and Aylesbury Vale District Council* ([1996] JPL), an approach confirmed in *JR Cussons and Son v Secretary of State for Communities and Local Government* ([2008] EWHC 443). The judgements make it clear that it is necessary to test whether there is accommodation which is both suitable and available. Where there is existing accommodation, it must be subject to scrutiny as to whether it can reasonably be held to be available. In accordance with *Keen*, the existing farmhouse is not available since it would be unreasonable to expect the appellant to vacate his home in order to retire. This would accord with the approach taken by other Inspectors.¹
11. On the second point, the reference in TAN 6 to personal preference or circumstances refers to establishing whether the need for a worker to be readily available is essential. The Council accepts that the need has been established. Thirdly, the traditional single-storey outbuilding identified by the Council is situated adjacent to the cattle complex comprising a large shed, holding pens, silage plant and concrete apron. The appellant says that the building is subject to flooding. Even if flood mitigation measures could be put in place, the siting of the building so close to the cattle shed would result in unacceptable living conditions for any future occupiers. TAN 6 advises that particular care should be taken when considering applications for houses near established livestock units. It is important to keep incompatible development away from other polluting or potentially polluting uses.
12. According to TAN 6, applications for new agricultural dwellings should be scrutinised with the aim of detecting attempts to abuse the concession that the planning system makes for such dwellings in the countryside. The existing farmhouse is not subject to an agricultural occupancy condition hence it is not required to be used in conjunction with the holding. Without some restriction there is nothing to prevent the existing farmhouse from being sold on the open market. In the long run this could result in pressure for further countryside dwellings which would undermine local and national policies. Even if an agricultural occupancy condition and a condition tying the new dwelling to the holding was imposed, a further application could be made for a third dwelling if the occupant of the new dwelling stopped working in agriculture.
13. Whilst a restriction on the occupancy of the existing farmhouse would not prevent such a further application, it would go some way to prevent an abuse consequent on its sale. At the Hearing possible mechanisms for ensuring that both properties would not come onto the open market in future were discussed. However, the appellant resisted putting any such restrictions on the existing farmhouse and no other acceptable solutions were put forward. As a result there is a conflict with JUDP Policy 48 and the aforementioned national guidance.

¹ Ref APP/V2723/A/04/1169731 and Ref APP/W9500/A/08/2087370.

14. In reaching my conclusion, I acknowledge that the encouragement of the continuation of family farming is a Welsh Assembly Government aim and the provision of a dwelling for later generations would promote this objective. I have also had regard to the new draft TAN 6. However, the weight that I can attach to this emerging guidance is limited and for the reasons outlined above, the proposal cannot be justified in the present circumstances. I have not found anything to alter my conclusion on the main issue which leads me to dismiss the appeal.

Rebecca Phillips

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

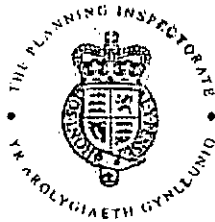
Mr R Llewellyn	Appellant
Mr David Llewellyn	Appellant's son
Mr Ian Pick BSc (Hons) MRICS	Ian Pick Associates Ltd
Mr Fred Fisher	F B Fisher Associates, Surveyors & Development Consultants

FOR THE LOCAL PLANNING AUTHORITY:

Mr Chris Williams	Pembrokeshire County Council
Mr Geoff Kingston	Pembrokeshire County Council

availability of dwelling

3



Appeal Decision

Hearing held on 10 March 2009

by Mrs K.A. Ellison BA, MPhil, MRTPI

an Inspector appointed by the Secretary of State
for Communities and Local Government

The Planning Inspectorate
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Decision date:
8 April 2009

Appeal Ref: APP/W9500/A/08/2087370

Rigg Hall, Stainsacre, Whitby, North Yorkshire YO22 4LT

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
- The appeal is made by Mr A Dixon against the decision of North York Moors National Park.
- The application Ref NYM/2008/0598/OU dated 23 July 2008 was refused by notice dated 29 September 2008.
- The development proposed is an agricultural worker's dwelling.

Decision

1. I allow the appeal, and grant planning permission for an agricultural worker's dwelling at Rigg Hall, Stainsacre, Whitby in accordance with the terms of the application Ref NYM/2008/0598/OU dated 23 July 2008 and the plans submitted with it, as amended, subject to the following conditions:
 - 1) Details of the access, appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development begins and the development shall be carried out as approved.
 - 2) Application for approval of the reserved matters shall be made to the local planning authority not later than three years from the date of this permission.
 - 3) The development hereby permitted shall begin not later than two years from the date of approval of the last of the reserved matters to be approved.
 - 4) The occupation of the dwelling shall be limited to a person solely or mainly working, or last working, in the locality in agriculture or forestry, or a widow or widower of such a person, and to any resident dependants.

Preliminary Matters

2. The proposal is made in outline with all matters reserved. The Design and Access Statement describes the proposed dwelling as a bungalow, constructed of natural stone with a slate roof. However, the Authority points out that bungalows are not traditional in the National Park and that the buildings at Rigg Hall have pantile roofs. At the Hearing, the Appellant confirmed that the proposal should be amended to one for a two storey dwelling with pantile roof.

I consider that no interests would be prejudiced by this amendment and I have taken it into account in determining the appeal.

Main issue

3. The main issue in this appeal is whether the agricultural justification is sufficient to override the presumption against an isolated dwelling in the countryside.

Reasons

4. Planning Policy Statement 7: *Sustainable Development in Rural Areas* (PPS 7) Annex A states that applications for new occupational dwellings should be scrutinised thoroughly and, in paragraph 3, sets out a number of requirements which such proposals should meet. It was common ground that the proposal meets the first three of these, namely that a functional need exists, it relates to a full time worker and the agricultural activity is financially sound. Given the amendment to the type and form of dwelling, I consider that the proposal would not conflict with the fifth requirement, that other planning requirements are satisfied.
5. The appeal therefore turns on whether the existing dwelling on the holding can be held to be available. According to the Authority, this dwelling provides for the accommodation needs of the enterprise. For the Appellant, it is argued that it is the family home of Mr & Mrs Dixon and it is unreasonable to expect them to vacate it to make way for an incoming worker.
6. The Appellant's position reflects the findings in *Keen v Secretary of State for the Environment and Aylesbury Vale District Council* ([1996] JPL), an approach which was more recently confirmed in *JR Cussons and Son v Secretary of State for Communities and Local Government* ([2008] EWHC 443). On the other hand, the Authority refers to *Ford and another v Secretary of State for Communities and Local Government* ([2007] EWHC 252). In that instance, even though there was a need for a worker to live on site and the existing dwelling was occupied, a new dwelling was not permitted because the current one was potentially available in the future. The Authority has also referred to the appeal decision which followed on from *Cussons* where planning permission for accommodation for an agricultural worker was not granted, even though the existing dwelling was occupied (APP/W9500/A/06/2029811).
7. In my opinion, these cases can be said to bear on the proposal before me as follows. Firstly, the *Keen* judgement, confirmed by *Cussons*, makes it clear that it is not sufficient for there to be some existing accommodation on site. It is also necessary to examine whether that accommodation can reasonably be held to be available. With regard to *Ford*, I am not convinced of the Authority's argument that its relevance lies in the finding that the existing dwelling was potentially available. In my view, that finding arose from the interpretation placed on a particular policy of the relevant Local Plan. No such policy is in force here. However, what *Ford* does clarify is that the existence of a functional need is not a simple absolute – it is also necessary to have regard to other considerations, where they are material. This would accord with the approach taken by the Inspector in APP/W9500/A/06/2029811.

8. Currently, the situation is that Mr Richard Dixon lives in Rigg Hall with his wife. According to their doctor, both have osteoarthritis which is expected to get worse with time. Together they have run the farm for many years but, with the passage of time, neither is as able as they once were to carry out the physically demanding tasks necessary to properly care for livestock. The farm is not functioning as effectively as it could and Mr Dixon now wishes to bring in his son, the Appellant, to take care of the stock. Although there are references to Mr R Dixon's retirement, it was stated at the Hearing that he intends to retain overall responsibility for management of the farm and expects to remain actively involved with it.
9. There are also personal reasons why Mr & Mrs Dixon wish to stay at Rigg Hall. The Dixon family has occupied the farm since about 1850 and, except for a handful of absences, this is where Mr Dixon has spent the greater part of his life. Furthermore, I heard that, even if the farm business failed, Mr Dixon would consider various other options rather than leaving his home. From what I have seen and heard, it is clear to me that Mr & Mrs Dixon have no plans to vacate Rigg Hall in the foreseeable future. Given the length of time they have lived there and their plans for continuing involvement with the business, I consider that, in accordance with *Keen*, the current dwelling is not available since it would be unreasonable to require them to leave.
10. However, the Authority makes two points. Firstly, it is implicit in the approach set out in PPS 7 that the close scrutiny of a proposed agricultural dwelling should include consideration of whether the need is long term. This is particularly so in view of the permanent effect which a dwelling would have on the landscape of the National Park, which is subject to the highest status of protection. Secondly, the need relates only to one worker yet this proposal would create a situation where two dwellings were in existence. In Annex A paragraph 1, PPS 7 states that *whether a need is essential in any particular case will depend on the needs of the enterprise not the personal preferences or circumstances of any of the individuals involved*. People in many walks of life can be faced with difficult choices about where they live, often in connection with their employment, so that the suggestion that Mr & Mrs Dixon should make way for the essential worker is not unreasonable.
11. On the first point I accept that, although there is no specific requirement in PPS 7 to demonstrate that the need for a permanent dwelling is long term, there is an implicit expectation that the need should be enduring, as evidenced, for example, in relation to the test of financial soundness and the prospects of the enterprise. However in this regard, I have already noted that Mr & Mrs Dixon do not appear to have any plans to leave Rigg Hall. In these circumstances, the clear indications are that the need for accommodation will persist for some time to come.
12. On the second point however, I do not accept the Authority's argument. The reference in PPS 7 to personal preferences or circumstances is made with regard to establishing whether the need for a worker to be readily available is essential. The Authority accepts that the need has been established. Paragraph 3(iv), which deals with meeting that need, requires consideration only of whether any other accommodation is suitable and available. In my view, personal preferences or circumstances have no role to play in assessing

whether this particular requirement is met. This would be consistent with the judgements in *Keen* and *Cussons*.

13. In summary therefore, I have found that there is no existing dwelling which can reasonably be said to be available to fulfil the functional need for a dwelling at Rigg Hall. Given that the proposal meets all other relevant requirements in Annex A of PPS 7, I conclude on my main issue that the agricultural justification is sufficient to override the presumption against an isolated dwelling in the countryside. On that basis, I also conclude that the proposal would not conflict with Core Policy A of the recently adopted Core Strategy which, among other things, gives priority to conserving the landscape of the National Park.

Conditions

14. In addition to the standard conditions relating to the submission of reserved matters, I have imposed an occupancy condition to ensure that the dwelling is kept available to meet agricultural need. The conditions are worded in accordance with the advice in Circular 11/95, *The Use of Conditions in Planning Permissions*. A further condition was suggested which related to the materials to be used but would, in my opinion, be unnecessary since this would form part of the reserved matters.
15. For the reasons given above I conclude that the appeal should be allowed.

K.A. Ellison

Inspector



Appeal Decision

Hearing held on 9 March 2010

Site visit made on 9 March 2010

by **Roger Pritchard MA PhD MRTPI**

an Inspector appointed by the Secretary of State
for Communities and Local Government

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Decision date:
18 March 2010

Appeal Ref: APP/V3310/A/09/2118524

**Ashlyn Farm, Alston Sutton Road, Upper Weare, near Axbridge, Somerset,
BS26 2LS**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
- The appeal is made by Mr and Mrs Vowles and Jayne Vowles against the decision of Sedgemoor District Council.
- The application Ref 49/09/00004, dated 28 April 2009, was refused by notice dated 18 June 2009.
- The development proposed is the erection of a rural occupational worker's dwelling with attached garage.

Decision

1. I allow the appeal, and grant planning permission for the erection of a rural occupational worker's dwelling with attached garage at Ashlyn Farm, Alston Sutton Road, Upper Weare, near Axbridge, Somerset, BS26 2LS in accordance with the terms of the application, Ref 49/09/00004, dated 28 April 2009, subject to the following conditions:
 - 1) Details of the appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development begins and the development shall be carried out as approved.
 - 2) Application for approval of the reserved matters shall be made to the local planning authority not later than three years from the date of this permission.
 - 3) The development hereby permitted shall begin not later than two years from the date of approval of the last of the reserved matters to be approved.
 - 4) The development hereby permitted shall be carried out in accordance with the following approved plans: Drawings No JV20 and JV10/A.
 - 5) The dwelling hereby permitted shall not be occupied until improvements to the vehicular access have been carried out as shown on Drawing No JV10/A. Those improvements shall include the consolidation and surfacing of at least the first 6 metres of the access, as measured from the edge of the adjoining carriageway and the provision of visibility splays extending 2.4 metres back from the carriageway edge to the centre line of the access and 43 metres to points on the nearside carriageway on either side of the access in accordance with details to be

submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details and the access and visibility splays shall be retained thereafter with no obstruction to visibility greater than 0.9 metres above the adjoining road level within these visibility splays.

- 6) The occupation of the dwelling shall be limited to a person solely or mainly working, or last working, in the locality in agriculture, in forestry, or in the commercial breeding of horses, or a widow or widower of such a person, and to any resident dependants.
- 7) The maximum habitable floorspace (measured externally) of the dwelling hereby permitted shall not exceed 150 square metres, and the floorspace (measured externally) of the attached garage hereby permitted shall not exceed a total of 40 square metres.
- 8) Notwithstanding the provisions of Classes A, B, C, D and E of Schedule 2, Part 1 of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking, re-enacting or modifying that Order), there shall be no enlargement, improvement or other alterations of the buildings hereby permitted nor the erection of any additional building or enclosure within their curtilage.

Application for costs

2. At the Hearing an application for costs was made by Sedgemoor District Council against Mr and Mrs Vowles and Jayne Vowles. This application is the subject of a separate Decision.

Procedural Matters

3. The application was made in outline with only access to be considered at this stage. Appearance, landscaping, layout and scale are reserved matters. The description of development was amended by the appellants from a '*stud worker's dwelling*...' to better reflect their intentions. In this context, in January 2010, the Council approved a retrospective change of use for the site from agricultural to equine and agricultural and at the Hearing agreed that the revised description of development was now more appropriate.
4. Mr and Mrs Vowles had submitted a signed Unilateral Undertaking, dated 20 May 2009, to make a financial contribution to sites for outdoor sport and children's outdoor play areas in the locality. The Council confirmed at the Hearing that the Undertaking fulfilled the requirements of Policies RLT2 and RLT3 of the adopted Sedgemoor District Local Plan, 1991-2011. I agree. The Undertaking is properly made and is necessary for the proposed development to go ahead.

Main issue

5. I consider the main issue to be whether the proposed development would meet the functional test set by Annex A of Planning Policy Statement 7, *Sustainable Development in Rural Areas* (PPS7) for rural workers' dwellings in the open countryside.

Reasons

6. The proposed development is for an additional dwelling to house a worker at Ashlyn Farm, an equine and agricultural holding specialising in the breeding and rearing of show ponies and horses, and trading as the Warleigh and Garthstone Studs. The enterprise is jointly owned by the appellants and Mr S Arrowsmith, but managed by Ms Jayne Vowles, for whose family the new dwelling is intended. Ashlyn Farm is in the open countryside in a slightly elevated position in the northern part of the Somerset Levels. It is around ½ mile south of the nearest, small settlement, Weare.
7. The Council has no specific policies in its adopted Local Plan that are pertinent to the proposed development. Relevant policies were not saved by the Government Office in accordance with the procedure set out by the Planning and Compulsory Purchase Act 2004. The Council's refusal therefore relies entirely on the national policy provisions set out in Annex A of PPS7.
8. Annex A lays down criteria to demonstrate a special justification for isolated new houses in the countryside. One circumstance in which such development may be justified is where the proposed accommodation would enable full-time, rural workers to live at, or in the immediate vicinity of, their place of work. Two tests need to be met - a functional test demonstrating an essential need for a worker to live close to the relevant enterprise, and a financial test demonstrating that the enterprise is financially sound and will continue to be so.
9. Ashlyn Farm is a well established business and no issues have been raised about its existing and continuing profitability. I agree: the business clearly passes the financial test set by Annex A of PPS7. The Council's sole concern is that the functional need for an additional dwelling is unproven.
10. The appellants demonstrated, to my satisfaction, that the total workforce currently occupied in the business was between 3 and 4 man-years on a full-time equivalent (FTE) basis. That input is made up of several components.
11. The first is Ms Vowles, who works full-time for the enterprise and currently lives with her parents in the farmhouse at Ashlyn Farm. The second is Mr Arrowsmith, who lives around 20 minutes driving time from Ashlyn Farm. Mr Arrowsmith does not always work full hours, but is present on most days and works outside normal hours during peak periods of activity, such as foaling. The enterprise also often benefits from the services of students from the Haddon Training Centre. Mr and Mrs Vowles Sr are part owners of the business and provide some administrative support. However, both are in their mid-60s, have no particular expertise in equine management and are no longer physically capable of undertaking heavier duties. Their major business interests are the network of holiday and caravan parks that they run in South Wales and South West England.
12. It emerged at the Hearing that the Council was under the misapprehension that Mr and Mrs Vowles Sr were key workers in the enterprise. The evidence I heard at the Hearing convinced me that this was incorrect. The key workers who undertake the full duties the business requires are Ms Vowles and Mr Arrowsmith, and only one of these, Ms Vowles, currently lives on site. Mr and Mrs Vowles Sr's part in the business is essentially financial and managerial and

their involvement in its day-to-day operations is incidental and subsidiary. I conclude that they cannot be defined as key workers in the sense set out in Annex A to PPS7.

13. The nature of an equine breeding and rearing business is somewhat different from that of a more conventional agricultural undertaking. There are distinct peaks of activity when more input is required, for example at foaling time. However, I consider that the value of the stock, the greater vulnerability of foals and young horses and ponies, and the effort required to break and school these, all make such an enterprise somewhat more labour intensive per unit of stock than most general agricultural holdings. I heard no evidence seriously to question the overall labour inputs going into the business at Ashlyn Farm and I noted Ms Vowles' comment that the relocation of stock from Newmarket in the near future would add to the number of mares currently accommodated.
14. The written material submitted with the original application speaks of two full-time workers on site. However, the evidence presented to the Hearing emphasised that the appellants' case was that one full-time key worker needed to be accommodated on site and that key worker would be Ms Vowles, for whom the proposed accommodation was needed. Mr Arrowsmith, the other key worker, would continue to live off-site. No case was put to me that two key workers needed to live on-site and that is the basis on which I have determined the appeal.
15. Nevertheless, the Council sought to persuade me that even one key worker permanently on site was unnecessary. I was not convinced. In particular, I am not as optimistic as the Council that the business's peaks of activity would be limited to as short a timespan as five months. There are many uncertainties in the breeding process and it seems reasonable to me to assume that a high level of activity would go on for a far greater period. In such circumstances, levels of high activity, requiring substantial care and supervision, would, in my view, encompass a significantly greater proportion of the year.
16. However, Annex A of PPS7 emphasises that meeting the test requires one or more workers to be readily available '*...at most times.*' The evidence put before me convinced me that the needs of this business do warrant a continuous on-site presence that meets this criterion. To conclude otherwise would accept too great an absence of supervision and surveillance on site that I consider would be incompatible with the health and security of the stock. It would therefore fail to deliver the proper functioning of the enterprise that is the essential basis for meeting the PPS7 test. Even outside peak times of activity, I therefore conclude that there is a need for one key worker in the enterprise to be readily available at most times.
17. PPS7 sets two additional criteria that have to be met before an additional dwelling can be justified. The first is whether a worker, demonstrated to be essential, could be housed in other existing accommodation in the area. The surrounding area is sparsely populated and I agree with both parties that there is an absence of suitable alternative dwellings in the vicinity. In these circumstances, I consider this alternative would not be available to a key worker at Ashlyn Farm.

18. However, PPS7 also emphasises that a demonstrated functional need must be unable to be met by an existing dwelling on the holding. It was the Council's position that Ashlyn Farm did and would fulfil this need. However, the Hearing demonstrated that this was, at least partly, on the assumption that Mr and Mrs Vowles Sr were key workers in the business. I have already concluded that this is incorrect.
19. Mr and Mrs Vowles' Sr are the owners of Ashlyn Farm, but the existing 5-bedroom farmhouse is occupied by four generations of the Vowles family. In addition to Mr & Mrs Vowles Sr and Ms Vowles, Ms Vowles' grandparent lives there, as well as her partner (who is not involved in the business) and their toddler son. A second child is expected in the autumn, by which time there will be seven persons living in the farmhouse. (Ms Vowles also told me that she has two teenage, step-children who she would like to be able to stay at Ashlyn Farm.) I accept that Ms Vowles' young family already need their own accommodation and that this position will be exacerbated when the second child arrives in the autumn.
20. I consider that it is both unreasonable to deny Ms Vowles, her partner and children separate accommodation and unacceptable to expect Mr and Mrs Vowles Sr to move out of the existing farmhouse that is their family home. In this context, they referred me to the judgement in *Keen v. Secretary of State and Aylesbury Vale DC* (QBD, JPL, 1996). I agree that these circumstances would be unreasonable and the Council stressed that neither had ever been part of their case.
21. The Council also emphasised to me that their sole reason for refusing the original application was the lack of a demonstrable functional need. They had no other planning requirements, as specified by paragraph 3(v) of Annex A, that the proposal did not satisfy.
22. It is therefore my conclusion that a functional need for at least one, full-time, key worker to be readily available at most times for the enterprise at Ashlyn Farm has been demonstrated. Moreover, no alternative accommodation is conveniently available in the vicinity, and the farmhouse at Ashlyn Farm is not practicably usable now or in the foreseeable future for the enterprise's key workers. Nor has any evidence been put to me that there are other planning considerations that should weigh against the proposed new dwelling. The proposed development thereby passes the functional test set by Annex A of PPS7.

Conditions

23. I have considered the conditions, which both the appellants and the Council suggested I impose were the appeal to be allowed, in the light of the advice in Circular 11/95 and the discussion at the Hearing.
24. Apart from the conditions standard to an outline permission and one requiring the development to be carried out in accordance with the approved plans, the Highway Authority has requested a condition to ensure that a safe visibility splay is provided at the existing access to Ashlyn Farm that the new dwelling would use. Although the existing access appears to have been safely used, the appellants have agreed that such an improvement would be beneficial to highway safety and I shall impose such a condition.

25. The proposal represents an exceptional development in the open countryside, justified by its occupation by a rural worker. The Council and the appellants agree that a condition restricting future occupancy to persons working in such rural jobs is necessary. I agree. Such conditions are normal in these circumstances and I shall impose one here.
26. Although the Council currently has no relevant development plan policy, it has been its practice where such permissions are granted to impose conditions limiting the size of any future dwelling and withdrawing permitted development rights allowing any future expansion on the site. Such conditions are not unusual where developments of this kind are permitted, and I agree both are appropriate here. I accept that these matters might be dealt with through the approval of reserved matters, but, on balance, I have concluded that the clarity of the development would benefit if those conditions were imposed now. I shall impose them.

Conclusion

27. For the reasons given above I conclude that the appeal should be allowed.

Roger Pritchard

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Brian Griffin FRICS, FAAV

John Vowles Sr

Jayne Vowles

Brian Griffin Planning and Countryside
Consultants Ltd., Agent to the Appellants

Joint Appellant

Joint Appellant

FOR THE LOCAL PLANNING AUTHORITY:

Christopher Gomm BA(Hons), MTP, Senior Planning Officer
MRTPi

DOCUMENTS

- 1 Letter from The B&W Equine Group submitted by the appellants

PLANS

- A 1:250 Layout Plan of the current use of the site, showing stables,
access etc



Appeal Decision

Hearing held on 16 January 2014

Site visit made on 16 January 2014

by Colin Cresswell BSc (Hons) MA MBA MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 19 February 2014

Appeal Ref: APP/Y1138/A/13/2200238

North Hollacombe, Crediton, Devon EX17 5BS

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for outline planning permission.
 - The appeal is made by Mr David Searle against Mid Devon District Council.
 - The application Ref 12/00791/OUT, is dated 28 May 2012.
 - The development proposed is described as "outline planning application for a permanent agricultural workers supervisory dwelling at North Hollacombe Farm".
-

Decision

1. The appeal is allowed and planning permission is granted for a permanent agricultural worker's supervisory dwelling at North Hollacombe, Crediton, Devon EX17 5BS in accordance with the terms of the application, Ref: 12/00791/OUT, dated 28 May 2012, subject to the conditions set out in the Schedule at the end of this decision.

Procedural Matters

2. The application was made in outline, with all details reserved for future determination. My consideration of the appeal proceeds on that basis.
3. The *Mid Devon District Council Local Plan Part 3 Development Management Policies* (the Local Plan) was adopted in October 2013, after the appeal was lodged. The appellant's representatives indicated that they were aware of this in advance of the Hearing.

Application for costs

4. At the Hearing an application for costs was made by Mr David Searle against Mid Devon District Council. This application is the subject of a separate Decision.

Main Issue

5. The main issue is whether there is an essential need for the proposed rural workers dwelling and, if so, whether permission should be granted in the absence of a planning obligation which would prevent disposal of the dwelling separately from the land holding of the farm.

Background

6. North Hollacombe was originally part of a larger farm which was operated by the appellant and his brother. The land holding was split between the two

brothers in 2011, with the appellant focusing on dairy farming and his brother focusing on beef farming. The two farms now operate as entirely separate businesses. Since the split, the appellant's son has been working on the farm on a full-time basis. He currently lives at Great Down, which was part of the original land holding transferred to the appellant's brother, but is physically divorced from the main farming operations at North Hollacombe. This has led to an application for a rural workers dwelling on the site.

7. The Council are satisfied that there is an essential need for an additional rural worker's dwelling and agree with the proposed location of the property within North Hollacombe. As such, the draft Officer's Report recommends approval. However, this is conditional on a planning obligation to tie the proposed dwelling to the land holding of the farm in order to prevent it being separated in the future. It is this matter which is the main point of disagreement between the parties and has led to the appeal being made.

Reasons

Whether there is an essential need for the dwelling

8. As the appeal is made on the basis that the Council has failed to determine the application, it will firstly be necessary for me to establish whether the principle of allowing an additional dwelling on the site is acceptable, even though there is no dispute between the parties on this particular matter.
9. North Hollacombe is located in the open countryside, where the *National Planning Policy Framework* (the Framework) states that isolated homes should be avoided, unless special circumstances apply such as the essential need for a rural worker to live permanently at or near their place of work. This is consistent with the objectives of Local Plan Policy DM10 which indicates that rural worker's dwellings will be permitted if certain criteria are met.
10. Criterion (a) of Policy DM10 seeks evidence that the nature of the business is such that a full time worker has an essential need to be permanently resident near their place of work. The appellant has submitted an *Agricultural and Rural Business Appraisal* (the Appraisal) which shows that there were 105 dairy cows, 33 in calf heifers, 39 young stock and 10 calves present on the farm in April 2012. Based on a standard methodology taken from the *John Nix Farm Management Pocketbook*, the Appraisal indicates that this amounts to a need for 2.04 full-time workers on livestock operations alone. It is stated that the farm has plans to accommodate 120 dairy cows in the future, which would require 2.43 full-time livestock workers. At the Hearing I heard that the current total stands at 126 dairy cows.
11. Presently, the appellant (who lives on the farm) and his son (who does not) are the only two full-time workers who care for livestock. The appellant's wife also lives at the farm, but works on a part-time basis dealing with other aspects of the business and also runs a bed and breakfast from the farmhouse. Contractors are also used to carry out particular tasks, although are not continuously involved in livestock care.
12. The appellant explained that the care of livestock may require workers to be available at short notice throughout the day and night for a variety of reasons. This includes the fact that calving takes place throughout the year, that young animals need constant attention, that artificial insemination needs to take place within a very narrow timeframe, and that emergency situations arise such as

when animals are sick or distressed. As such, there needs to be a rural worker within close proximity of the farm to respond to these events as they arise. Considering the scale of the business, I agree that an individual worker would not always be able to deal with these situations alone and therefore a need exists for more than one full-time worker to reside at or near the farm. Therefore, criterion (a) of Policy DM10 is met.

13. Criterion (b) of Policy DM10 tests whether the need can be met within a nearby settlement, or by existing buildings within the site itself. During the Hearing, I heard that the appellant's son only lives 5 minute's drive from the farm and that Crediton, which has a relatively wide availability of housing, is a similar distance away. However, it was emphasised that a rural worker would need to be within immediate sight and sound of the farm in order to detect emergency situations and respond immediately. It was also argued that when there is ice and snow on lanes, it may be difficult to reach the farm and these are occasions when emergency situations are more likely to occur. Therefore, despite there being some housing availability relatively close to the site, I accept that in this particular case there needs to be an additional worker resident within North Hollacombe itself.
14. There are already two permanent dwellings at the farm. Apart from the main farmhouse at North Hollacombe, there is also Hollands. However, whilst Hollands offers potential accommodation for a rural worker, this was part of the land holding transferred to the appellant's brother and therefore is not in the control of the dairy farm. Although the farmhouse at North Hollacombe may be large enough to accommodate an additional rural worker or potentially be extended, it was argued that this would be incompatible with the established bed and breakfast business. There are also some derelict buildings on the farm, but due to their location near the farming operations and general state of disrepair, I agree that they would not be suitable for conversion. I therefore consider a new rural workers dwelling to be the most acceptable solution and consider the terms of criterion (b) of Policy DM10 to be met.
15. Criterion (c) of Policy DM10 concerns the size and scale of rural workers dwellings. However, in this particular case there is no indication of how large the dwelling would be as the application was made in outline. Consequently, this aspect of the policy does not directly apply. Criterion (d) examines whether the enterprise has been established for at least three years and will remain financially sound into the future. These matters are covered by information contained in the Appraisal, including accounting information from before and after the farm was split between the two brothers. All the indications are that the farm, before the split, was profitable in the long-term and that the dairy operations at North Hollacombe will remain so in the future. During the site visit, I also saw evidence of recent investment in the business including the new milking parlour and cow cubicles. Overall, I therefore consider that the terms of criterion (d) of Policy DM10 have been met.
16. I therefore find that the proposal is in accordance with Policy DM10 and the Framework, and that an essential need for an additional rural workers dwelling in this location has been established. In this respect, I agree with both parties. I now turn to the matter of whether a planning obligation is appropriate in order to tie the proposed dwelling to the land holding, which is the main point of contention in this case.

Whether a planning obligation is required

17. The supporting text of Policy DM10 states, in paragraph 2.6, that *"In appropriate circumstances, the Council will also seek Section 106 agreements... to tie the rural workers dwelling to the operation and associated land which has the essential need to prevent the splitting of the dwelling from the operation"*. Although what is meant by "appropriate circumstances" is not defined within the Local Plan, any planning obligation would have to meet the tests which are set out in Paragraph 204 of the Framework. This is that it is necessary to make the development acceptable in planning terms, is directly related to the development, and is fairly and reasonably related in scale and kind.
18. The appellant's Appeal Statement largely focuses on the effect that the proposed obligation would have upon the operation of the business. It is stated that it would be difficult to buy and sell land to respond to any business opportunities that may arise. One scenario envisaged is that it might, in future, be necessary to sell land to a statutory undertaker in order to enable road or sewage improvements. However, there are no immediate plans to sell land for such purposes and the Council indicate that an application to vary the proposed planning obligation for these reasons would be treated sympathetically. I agree that it may be difficult to vary an obligation in time if land was bought or sold at auction. However, there was a discussion at the Hearing which suggested that it may be possible to overcome this issue if the proposed obligation were more flexibly worded. Although the appellant argues that the proposed obligation would have implications for VAT exemption and the ability of the business to borrow money, these matters would need to be weighed against whether the obligation would be necessary to make the dwelling acceptable in planning terms.
19. The Council draw particular attention to the number of permanent dwellings that were permitted on the original land holding before the business was split between the two brothers. In addition to North Hollacombe farmhouse, these amount to Hollands and Great Down, which were permitted in the 1970s, and three barn conversions which were permitted in 2005 and later sold off. Hence, the appeal proposal would constitute the sixth dwelling built on the original land holding from the 1970s onwards. The Council argue that this shows a clear pattern of sub-division within the holding, contrary to policies which seek to control development in the open countryside.
20. During the Hearing, the appellant indicated that Holland and Great Down served the needs of the farm when originally built, and that the more recent barn conversions were of limited use to the business due to their separation from the farmyard. Whilst I recognise the Council's concerns, it does not necessarily follow that the historical pattern of development within the original land holding will continue. The dwellings that were granted permission in the past would have been approved on the basis of the evidence and planning policies which existed at that time. Of greater relevance to the appeal are the current circumstances facing the business and what is realistically likely to happen to the land holding in the foreseeable future.
21. It is clear that there has been substantial investment in dairy operations at North Hollacombe which are geared at increasing the capacity of the farm commensurate with the current land holding. Were the land holding to be significantly reduced in the future, the infrastructure at North Hollacombe would not be fully utilised. The appellant argued at the Hearing that further

splitting of the farm is unlikely to be viable due to the expenditure that would be needed to establish a separate farmyard. Overall, there is little evidence to suggest that current circumstances are such that the farm will be split in the foreseeable future, despite the history of the site.

22. It is also argued by the Council that the proposed dwelling would be easy to dispose of as it would be physically separated from the farmyard. Although this may be the case, I mindful that *Circular 11/95: Use of conditions in planning permission* advises that it should not be necessary to tie occupation of rural worker's dwellings to workers engaged in one specific farm, even though the needs of that business justified the provision of the dwelling. This is because an occupancy condition would ensure that the dwelling is kept available to meet the needs of other rural businesses in the locality in the event that it is no longer needed by the original business, thus avoiding a proliferation of dwellings in the open countryside. Any subsequent applications for dwellings on the farm would need to be assessed on their own merits and the impact of cumulative development could be taken into account.
23. Given the circumstances of the case and the evidence put before me, I do not consider that it has been proven that a planning obligation would be necessary in order to make the development acceptable in planning terms. Therefore, a planning obligation based on the draft that was circulated at the Hearing would not meet the tests set out in Paragraph 204 of the Framework.
24. In reaching this conclusion, I have taken account of the Appeal Decision¹ that was referred to by the Council during the Hearing. In that case, the Inspector considered that it would be appropriate to impose a planning obligation to tie a rural worker's dwelling to the land holding because the proposed dwelling was larger than necessary to meet the needs of the farm. However, the appeal proposal is not directly comparable because it was made in outline with all matters reserved. As such, the size and form of the proposed dwelling is not a matter for consideration at this stage.

Conclusion

25. I therefore conclude there is an essential need for the proposed rural workers dwelling and that permission should be granted in the absence of a planning obligation which would prevent disposal of the dwelling separately from the land holding of the farm. The proposal would comply with policy DM10 of the Local Plan and Paragraph 55 of the National Planning Policy Framework which allow rural worker's dwellings as an exception to policies which otherwise control development in the open countryside. For the above reasons, and having regard to all other matters raised, I therefore conclude that the appeal should be allowed.

Conditions

26. I have referred to the conditions suggested by the Council and considered these in light of *Circular 11/95: The use of conditions in planning permission* and the discussion which took place at the Hearing. I have not imposed a condition requiring samples of materials because the application was made in outline. The Council have suggested that reserved matters are received within two years and that development should commence no later than one year following approval of these. However, the usual time limit for submission of

¹ Appeal Ref: APP/C1435/A/13/2192117

reserved matters is three years with two years for subsequent commencement. Although the dwelling is needed to serve the immediate needs of the business, this is insufficient reason to deviate from the usual time limits which I have imposed. There is also a condition to limit occupation of the approved dwelling to those associated with agriculture or forestry because to ensure that it serves a local need as an exception to policies which otherwise seek to control development in the open countryside.

Colin Cresswell

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) Details of the access, appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development begins and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than two years from the date of this permission.
- 3) The development hereby permitted shall begin not later than one year from the date of approval of the last of the reserved matters to be approved.
- 4) The occupation of the dwelling shall be limited to a person solely or mainly working, or last working, in the locality in agriculture or forestry, or a widow or widower of such a person, and to any resident dependants.

APPEARANCES

FOR THE APPELLANT:

David Searle

D R Searle & Partners

Simon Searle

D R Searle & Partners

Phoebe Millar BSc (Hons) MRICS FAAV

Robert H Hicks & Co

Robert Hicks FRICS FAAV

Robert H Hicks & Co

FOR THE LOCAL PLANNING AUTHORITY:

Daniel Rance DipTP RICS

Mid Devon District Council

DOCUMENTS

SUBMITTED AT THE HEARING:

1. Draft section 106 agreement relating to land at North Hollacombe Farm.
2. Costs application, Mr David Searle.
3. Defence of costs application, Mid Devon District Council.

Carter Jonas

Appendix 4

NFU Supporting Email

Davenport, David

From: Martin Wiles <martin_wiles@nfumutual.co.uk>
Sent: 24 August 2016 11:14
To: Dunn , Keiron
Cc: Katy Beadle
Subject: Planning application for Richardson's of Dovecote Farm. DN5 7HS.

Keiron

Thank you for taking my call today.

I have been in contact with John Richardson and he has asked that, as his NFU Group Secretary I contact you and start an earnest dialogue in order to progress this much needed planning application for a home at Dovecote Farm for John, his wife and new baby.

I have seen and read some of the most recent correspondence and I am equally saddened with the present position of the Richardson's application.

The NFU worked hard with central Government to develop a workable and straight forward National planning guideline and process to maintain and promote a sustainable rural economy.

Rather than revisiting previous points of concern at this time I would like to encourage you, Matthew Smith and others to consider the following so that, as you indicated, an extension may be granted in order to more fully explore the concerns of all the Stake holders involved.

Firstly, the need for 24/7 attendance is not just a body on the farm. A livestock/ Dairy farmer needs to be able to SEE and HEAR his animals at all times. His skill in being a true Husbandman, built up over years of training and experience is to sense when something is wrong or an animal needs attention, even when he is in the farm house.

Braking this visual and auditory bond with the farm by insisting he lives perhaps miles from his animals will have a serious and detrimental affect on his ability to farm effectively.

Secondly, the security of the farm will be severely compromised for the same reason, being able to see and hear what's going on, in my experience often can prevent losses including rustling that would not be able to be prevented otherwise.

Lastly, for the purposes of this email, the subject of the management of calving cows, in my opinion, has to be considered.

A Dairy Farmer will often visit a calving cow, 4 or 5 times a night. Having to travel a good distance by motor vehicle every time a cow needs to be seen at this most delicate and possibly hazardous of times would be totally impractical. Local residents would be disturbed with motor vehicles running at all hours of the night and the danger of missing a vital symptom in the calving process would be much increased.

In my view, Our part of Yorkshire needs a vibrant and successful rural economy which under pins so much of what we value about our country side.

Helping John Richardson and his new and growing family develop his family farm into the next generation and beyond by enabling him to live and manage his dairy herd effectively will show how much the council appreciates the need for rural sustainability and will reap dividends well into the future for all concerned.

I look forward to hearing from you soon but would be happy to meet with you face to face to discuss this further if needed.

Kind Regards
Martin Wiles

NFU Senior group secretary

Martin Wiles | Agent

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