

# **Agricultural, Forestry & Other Essential Occupational Dwellings Guidance - Adopted 2009**





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## Foreword

Supplementary Planning Guidance on Agricultural Workers' Dwellings was adopted by North Devon Council in October 1997. This guidance needed to be updated following publication of Planning Policy Statement 7 'Sustainable development in Rural Areas' (PPS7) and re-appraised for adoption as a Supplementary Planning Document (SPD) within the Local Development Framework (LDF) for North Devon in order to supplement policies in the Council's adopted Local Plan.

This SPD gives advice on applications for new dwellings associated with existing rural enterprises, or associated with new rural enterprises which may need a dwelling in the future. It is intended to inform, assist and guide development and will be used in making decisions on particular planning applications.

In accordance with Government guidance (PPS12 'Local Development Frameworks'), the new guidance has been prepared alongside a Sustainability Appraisal and Strategic Environmental Assessment in accordance with the indicators from the adopted Sustainability Appraisal Framework identified within the sustainability scoping report for this document. A copy of this document has been published separately.

The draft of this policy guidance was subject to a six-week formal consultation period from 21st July to 1st September 2008 in order to take account of the views of a wide range of organisations, individuals and other stakeholders. In addition separate meetings have been held with members and local land agents. All representations received can be viewed by request to North Devon Council or at <http://northdevon-consult.limehouse.co.uk/portal/>

All representations received on time and relevant to this document were considered by North Devon Council before it was finally adopted as a Supplementary Planning Document within the Local Development Framework for North Devon Council on 14th July 2009.

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### Why this Document is Needed

It is appropriate to consider what makes the dwellings covered by this document different from others considered by the Council, and to ask why they require specific guidance.

Most of the applications the Council receives for new dwellings are to site them in areas designated as suitable for housing by the development plan. This means that, subject to site specific considerations (such as flood risk, access, impact on neighbours etc.) the underlying principle of residential development is unlikely to be contentious.

With agricultural and forestry operations particularly, any dwelling likely to be sought for use in connection with such an enterprise is likely to be in a rural setting, outside areas allocated for housing. In such areas the presumption, in the absence of special justification, is that the location of a dwelling there will be unacceptable.

This background means that dwellings in the countryside will attract particularly close scrutiny. This is required by government policy and is appropriate for the protection of the rural landscape.

There are concessions in the planning system for agriculture, forestry and certain other rural activities that need dwellings on site to function properly. The Council is mindful of the needs of such enterprises and certainly would not wish to deny genuine requirements. The rigorous scrutiny of applications for occupational dwellings in rural areas should not therefore be seen as the result of a negative attitude towards such applications, but rather as ensuring that the limited amount of such development permitted is concentrated on appropriate enterprises that meet the established criteria.



## 1 An Overview of the Policy

### Essential Dwellings - An Overview

**1.1** Since the introduction of the Town and Country Planning Acts in 1947, there have been few circumstances in which isolated new dwellings in open countryside have been allowed. One concession has been for agricultural and forestry worker's dwellings. Since 2004, with the publication of Planning Policy Statement 7 (PPS7) 'Sustainable Development in Rural Areas', a similar concession has been provided for other rural enterprises for which a new dwelling is essential.

**1.2** The agricultural workforce across Devon has declined over the last 20 - 30 years. Farm incomes have fluctuated, but have generally shown a long-term trend of decline. There have also been changes in the way the workforce is structured, with increases in the use of contractors, self-employed staff and part-time workers.

**1.3** At the same time, the rural economy has adapted. New and innovative enterprises have been developed, the importance of (and economic contribution of) the horse industry has grown considerably <sup>(1)</sup> and farm and rural diversifications have become commonplace <sup>(2)</sup>.

**1.4** Agricultural and forestry workers' dwellings have historically caused a level of concern well in excess of their numbers. In response to research carried out between 1992 and 1995 <sup>(3)</sup>, in 1997 Government introduced a two-stage process whereby new permanent agricultural dwellings would only be permitted on well-established units with existing needs. New enterprises, whether on newly-created or existing holdings, would normally for the first three years have to meet any residential needs by the provision of temporary accommodation <sup>(4)</sup>. That policy remains largely unchanged <sup>(5)</sup>.

**1.5** It will often be as convenient and more sustainable for workers to live in nearby towns and villages. There will be some cases where the demands of the work concerned make it essential for one or more workers to live at, or very close to, the site of their work.

**1.6** Annex A of PPS7 requires applications for new occupational dwellings in the

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1 The Henley Centre, "A Report of Research on the horse industry in Great Britain", Defra (March 2004)

2 See for example "The Implementation of National Planning Policy Guidance (PPG7) in Relation to the Diversification of Farm Businesses", Land Use Consultants, published by the DTLR in October 2001.

3 "Planning Controls over Agricultural and Forestry Development and Rural Building Conversion", DOE Planning Research Programme, 1995.

4 Introduced in Planning Policy Guidance Note 7 "The Countryside - Environmental Quality and Economic and Social Development", DOE, February 1997.

5 Planning Policy Statement 7 "Sustainable Development in Rural Areas", ODPM, 2004, Annex A.

countryside to be scrutinised thoroughly with the aim of detecting attempts to abuse the concession that the planning system makes for such dwellings.

**1.7** At both national and local level there has been a perception that the policy concession has been subject to abuse, with the agricultural dwelling exemption exploited for speculative purposes or as a means of gaining a new home in the countryside without the required justification.

**1.8** Such concerns have been highlighted in reports such as the Campaign to Protect Rural England (CPRE) (1990) which advised “CPRE fears that abuse of the special exemption offered to agricultural dwellings is widespread...the result has too often been the development of a substantial house with little or no associated agricultural activity, isolated in the countryside, where strict planning policies are intended to control new development”. More recently, a report by Land Use Planning Consultants (1996) concluded “in more isolated rural areas considerable emphasis may still be placed on personal circumstances over functional need; retirement dwellings are not uncommon”.

**1.9** Genuine applications to meet a clear essential functional need will be looked at sympathetically, and it is certainly not the intention of the Council to inhibit justified applications.

**1.10** Whilst attempts to exploit the system are normally relatively straightforward to identify, there will be cases where differing priorities exist. This guidance seeks primarily to help potential applicants and their agents to understand how the Council will assess such cases.

**1.11** The tests of national and local policy are designed to identify which applications are based on the need for a dwelling to serve the functional needs of an enterprise and which ones are instead centred more on issues of convenience and/or personal preference. It should be remembered that it is for the applicant to provide information to demonstrate that the application meets the policy tests.

**1.12** PPS7 makes clear that the policy for new essential dwellings applies not only to agriculture and forestry, but that there may be instances where a new dwelling can be justified in association with other rural-based enterprises. The same stringent tests will be applied.

**1.13** Rural enterprises, together with any development necessary for their operation, will need to demonstrate that the use itself requires a rural location, and that any residential component meets the same tests of functional need and be acceptable in planning terms and permitted in that rural location. Accordingly, it will need to be shown that the use itself needs a rural location, is permitted in that location, and that any residential component meets the same stringent tests set out in Annex A of PPS7 and outlined in this SPD.



**1.14** Where farm businesses have diversified or are proposing to do so, the needs of the business can be considered as a whole in assessing whether a new dwelling is justified and acceptable in planning policy terms.

## The Policy Tests

**1.15** New permanent dwellings will only normally be permitted where they: are well established enterprises that have operated for at least three years; have an existing essential functional need and; have been profitable, are currently financially sound and have clear prospects of remaining so.

**1.16** If an enterprise is new then for the first three years only temporary accommodation will be permitted. This restriction will apply to new enterprises on newly purchased land and also to new enterprises on existing land which may have been owned for many years. Depending upon circumstances, the re-structuring of a well-established enterprise may also be considered as a new enterprise, especially if it involves the purchase of additional blocks of land on which the dwelling is proposed, or a shift of enterprises to an off-lying block of land, separate from the main holding.

**1.17** In both cases, PPS7 sets out important tests for temporary and permanent dwellings, all of which should be met in full in all cases.

New Permanent Dwellings should satisfy the following criteria (paragraph A3 of PPS7):

- i) clearly established existing essential functional need for resident worker;
- ii) need relates to a full-time, not part-time requirement;
- iii) unit and activity concerned are well established, profitable and have sound financial prospects;
- iv) functional need can only be met by proposed dwelling; and
- v) other general planning requirements that would apply to any dwelling are met.

Temporary Dwellings should satisfy the following criteria (paragraph A12 of PPS7):

- i) evidence of intention and ability to develop enterprise;
- ii) essential functional need for resident worker arising from enterprise;
- iii) enterprise planned on sound financial basis;
- iv) functional need can only be met by proposed dwelling; and
- v) other general planning requirements that would apply to any dwelling are met.

**1.18** Policies from adopted Local Plans are also highly relevant. The adopted North Devon Local Plan includes policies HSG9 (permanent dwellings in the countryside), HSG9A (permanent dwellings in the countryside for rural based industries), HSG10 (temporary accommodation on new farm or forestry enterprises) and HSG11 (occupancy restrictions) all of which are listed in Appendix 1. In addition to these specific policies, the provision of agricultural, forestry and other essential occupational dwellings will need to comply with a range of other planning policies to ensure that the design is appropriate. These key planning policies are summarised in Appendix 2.

## General Issues

**1.19** The reason why a need for residential accommodation has come about needs to be explained clearly. The recent history of the holding and any fragmentation or alienation of land and/or dwellings may be relevant. Particular scrutiny will be given in cases where the agricultural needs of the unit have been met by other dwellings in the past or by farming enterprises centred on other blocks of land. The applicant will need to demonstrate what has changed to necessitate a dwelling now.

**1.20** Whether the worker needs to live on site will depend upon the needs of the enterprise and not on the personal preferences or circumstances of any of the individuals involved. This is often an area where the impact of policy seems harsh to applicants, but a preference to have family living on site, the ability to afford a dwelling, ease of recruiting staff if a dwelling is available or the financial advantages from building on the applicant's own land do not constitute functional need.

**1.21** If houses or buildings suitable for conversion have been sold off in the recent past, this sale may be taken as an indication of a lack of need. If the application relates to a second (or successive) dwelling on a unit, an occupancy condition may be imposed on any existing dwellings. For permanent dwellings the Council will also require the completion of a legal agreement to prevent the future separation of a dwelling from the land that supports the enterprise for which that dwelling is needed without the Council's

agreement.

**1.22** Genuine cases will be looked at sympathetically and carefully. It is for the applicant to provide the necessary evidence and information on which the Council can make an assessment. The SPD aims to provide guidance on how this assessment of whether a proposal meets the policy tests will be made, and on the type and level of information that may be required.

## 2 Temporary Dwellings

### Introduction

**2.1** The applicant will need to explain how the need has arisen. For example, it may be relevant to explain how the land has been farmed or the enterprise operated without a dwelling in the past, or whether ownerships have changed. This required explanation will apply equally to other rural enterprises for which a temporary dwelling is being sought. It will be necessary to set out clearly what is intended and how it might develop, identifying whether proposals depend upon rented land, upon future buildings for which planning permission is needed, or on outside income (for example, off-site employment or income from a spouse).

**2.2** Where a need for residential accommodation relates to a new activity, whether on a newly created unit or an established one, it should normally for the first three years be provided by some form of temporary accommodation.

**2.3** PPS7 Annex A paragraph 12 refers to:

- a caravan;
- a wooden structure which can be easily dismantled; or
- other temporary accommodation.

**2.4** It is normal to provide accommodation by a static caravan or a single or double mobile home. It may also be acceptable to provide accommodation by a comparably sized wooden lodge, provided that such accommodation is acceptable in planning terms (for example, landscape impact) and can be shown to be a structure that can be easily dismantled. As temporary consents are normally only given for three years, it is in the applicant's interests to ensure that any wooden lodge can be dismantled and sold at the end of that period.

**2.5** The Local Planning Authority would expect any temporary accommodation to meet the same criteria regarding its siting and relationship with agricultural buildings and associated livestock as would be expected of a permanent dwelling.

### Evidence of a Firm Intention and Ability to Develop the Enterprise

**2.6** The applicant must provide clear evidence of a firm intention and ability to develop the enterprise. Historic or proposed investment in permanent buildings is often a good indication, because it necessitates a level of financial commitment to an enterprise.

**2.7** It will not be necessary to erect functional farm buildings before making an application for a temporary dwelling in order to demonstrate intent. If a new enterprise is being considered for which a residential presence is considered necessary, it may be possible for the Local Authority to impose a condition on any temporary

accommodation requiring new buildings to be substantially completed before the accommodation is first occupied.

**2.8** A Business Plan is usually helpful and will set out what is intended, how it will be operated, what investment is required, how products will be marketed, what market research has been carried out, who will be involved with the activities, budget and profitability projections. It may include cash flows and it may include a sensitivity analysis. A well researched and supported Business Plan will take considerable time to research and prepare, and indicates intention.

**2.9** The Council will consider carefully the financial basis of the enterprise taking into account factors that include the permanence or otherwise of buildings, the size of the holding and the basis on which any enterprise is being planned and operated (for example, reliance on short term contracts or specialist markets) particularly when considering proposals to renew a temporary permission or subsequently seek planning permission for a permanent dwelling.

**2.10** Providing clear evidence of ability is more difficult, especially with proposed new enterprises. Any information about training undertaken or experience gained should be supplied. It is for the applicant to demonstrate that he/she has the ability, as well as the intention, to develop the enterprise proposed.

### The Functional Test

**2.11** A temporary dwelling will only be permitted where there is a functional need, whether for agricultural, forestry and/or rural business enterprises. This test means that it is or will be essential for the proper functioning of the enterprise for one or more workers to be readily available at most times.

**2.12** The functional test requires an evaluation of risk. The policy test is not about ease, convenience or personal preferences. It is about providing new residential accommodation only where the needs of the enterprise require that worker to be readily available for it to function properly. Although many enterprises can be operated more easily if a worker is living on site, and in many cases it will be more convenient for the worker, this does not represent need, and will not therefore meet the requirements of PPS7.

**2.13** In assessing whether a particular enterprise requires a resident or nearby worker, consideration must be given to (amongst other things):

- the scale and nature of the enterprise;
- the potential for things to go wrong or need attention unexpectedly or at short notice;
- the frequency of such events;
- the ability of a nearby worker to identify and deal with such events;

- the accessibility and availability of suitable accommodation in nearby settlements;
- the animal welfare considerations involved;
- the amount of suffering or loss if there is no resident/nearby worker; and
- the period of time over which this need occurs.

**2.14** A need to live on site might be accepted if a worker is needed to be on hand day and night at most times:

- in case animals or agricultural processes require essential care at short notice; or
- to deal quickly with emergencies that could otherwise cause serious losses.

**2.15** Plenty of enterprises can operate perfectly well without a resident worker. Many arable, livestock, equine and other diversified enterprises, with prudent and careful management, do not need a dwelling. It is only where the risk of problems occurring, or the need for rapid action at short notice, is so great that it cannot be met by an off-site worker, that a dwelling will be appropriate.

**2.16** The scale of enterprise is relevant. Whilst many enterprises will have occasional problems necessitating attention, small-scale enterprises are unlikely to give rise to the need for a dwelling. It will be necessary to assess the frequency and timing of the potential need. During the day there may be a worker on the enterprise anyway. Out of normal working hours, regular checking in line with good management practice, or the use of modern technology (CCTV, alarms etc) may meet the need. It is only where it is essential, for the proper functioning of the enterprise, for the worker to be readily available at most times (day and night) that a functional need will be accepted.

**2.17** It is also necessary to consider the period of time over which there is a need. Seasonal needs may be capable of being met by a seasonal worker's caravan, permitted under existing legislation. Hence if there is a short-term need, for example due to lambing or for rearing game birds, it is likely that any such need may be so met without providing year-round residential accommodation.

### Short-term or seasonal needs

Some enterprises may give rise to seasonal needs when a worker may need to be readily available at most times for short periods of time. This may occur, as an example, with sheep. In an appeal at Sloley Park Farm in 2003 the Inspector confirmed that the need to be readily available during lambing could be met by a touring caravan. It did not amount to being needed **“at most times”** as required by PPG7 (the same requirement is now in PPS7).

(APP/X1118/A/03/1114252)



**2.18** It is only those enterprises that, for their proper functioning, require a worker to be readily available at most times, day and night, and where that need cannot be met in any other way, that will satisfy the functional test.

**2.19** Where a new dwelling is sought for an enterprise relating to separate parcels of land within a locality, the functional need will be considered with particular care. For example:

- whether a dwelling within a local village could provide a central location from which to access the different parcels of land;
- whether a proposed dwelling can be justified by the functional need of just the parcel of land on which it is located; or
- whether the proposed location would satisfy the functional test if the functional need relates to the enterprise as a whole.

**2.20** The Council will assess the functional need of the enterprise proposed. It will be relevant to consider whether the need for residential accommodation can be met by simple re-organisation or management changes to the holding (e.g. by housing the most sensitive animals near to an existing dwelling), but it will be inappropriate for the Council to promote major re-organisation of a business which has developed for sound reasons, in order to obviate the need for a dwelling.

### Re-organisation

At Philips Farm the Appellants ran two separate but linked operations, being a large suckler herd at Philips Farm, and a rearing and fattening unit at Oldborough Farm. There was already a dwelling on the rearing unit, and it was agreed that the calving and weaning process required a dwelling close to it. It was however argued that the enterprises could be swapped, thereby obviating the need for a dwelling. The Inspector concluded that the current split was fully justified and that to require the business to re-organise to the extent suggested was **“unrealistic and unsupported by planning policy”**.

(APP/F1610/A/02/1082954)

**2.21** For new enterprises, it is not necessary that the functional need is existing or will arise immediately. It must however be reasonably expected to arise from the planned operation within the period of any consent. Accordingly, a planning application can be made for residential accommodation for a proposed enterprise.

**2.22** For all temporary applications it will be necessary to consider and provide information on:

- the nature of the enterprise, its scale and management;
- the reasons why it is considered that a resident worker is needed;
- how a resident worker might identify a problem (e.g. regular checking or by alarms);
- what measures have been considered to meet these needs without a resident worker (e.g. CCTV); and
- why the need cannot be met without a resident worker.

**2.23** The application should be accompanied by sufficient information for such an assessment to be made. Professional opinions or analysis may help.

### Evidence of a Sound Financial Basis

**2.24** New enterprises need to show “clear evidence” that an enterprise is planned on a sound financial basis. The emphasis on clear evidence means that it is for the applicant to demonstrate sound financial planning to the Council. An application for a temporary dwelling will normally be expected to be accompanied by a detailed Business Plan including budgets and projections. Budgeting books may help. Where projections are at significant variance with budgeting book figures, it will help if as much evidence as possible is submitted to verify projections, as it is for the applicant to provide clear evidence.

#### Planned on a sound financial basis

In an appeal at Collard Bridge Farm, a fish farm, the Inspector concluded that whilst he could see that investment had been made as an indication of intentions, **“no firm business plan, for example, was submitted to show that the future of the enterprise had been planned on a sound financial basis”**(APP/X1118/A/05/1178515). A comprehensive, well researched and substantiated Business Plan with budgets and a sensitivity analysis is a good indicator of intentions, as well as a way to test whether a venture is planned on a sound financial basis.

**2.25** Projections set out in Business Plans (including cash-flows and budgets) will be analysed to assess whether they are realistic. The test is of “clear evidence” and therefore projections should be more than simply wishful thinking. Aspirations should be reasonably likely to materialise and be capable of being sustained for a reasonable period of time (PPS7, Annex A paragraph 2).

**2.26** The business will be subject to a further financial test in the future if a permanent dwelling is subsequently sought. Projections made at the outset may be compared to actual performance in the future. It is in the applicant's interests, therefore, for projections to be realistic.

**2.27** If the projections depend heavily upon rented land, or if there is a need for further investment or planning permission for an enterprise to develop fully, this requirement should be made clear. Information should be provided about how such risks to the security or financial performance of the business, will be minimised. It may also be appropriate to run a sensitivity analysis to show, for example, the effect of a 10% increase in feed prices.

**2.28** While it is recognised that rented land plays an important and legitimate part in farming operations, enterprises where considerable reliance is placed on off-lying or short-term rented land in their financial planning will be looked at with particular care. Furthermore, caution will be required if the viability of a holding is identified as dependent on the annual purchase of a substantial acreage of grass keep. PPS7 (Annex A paragraph 2) identifies that assessments should evaluate the potential for an enterprise to be sustained for a reasonable period of time. Whilst the time-frame is not further defined, heavy reliance on short-term arrangements will not normally give sufficient security of tenure to provide clear prospects for the future.

**2.29** Where the need relates to an enterprise for which there is no or little data available for comparisons, the applicant will be expected to provide evidence to support projections and predictions to support the budgets. The onus is on the applicant to demonstrate “clear evidence that the enterprise is planned on a sound financial basis”.

**2.30** Temporary consents will only be approved where there is clear evidence of a firm intention and ability to develop the enterprise, the enterprise is planned on a sound financial basis and that there is a functional need. After three years of temporary consent, an enterprise would be expected to show that it meets the functional and financial tests or is no longer required. Renewal of temporary consents will not normally be granted.

## 3 Permanent Dwellings

### Introduction

**3.1** New permanent dwellings will only be permitted on well-established enterprises with existing needs. Applicants will be expected to provide information to demonstrate that they meet the relevant tests, whether for agricultural, forestry or rural business enterprises.

**3.2** If a permanent dwelling follows a temporary consent, the Council will consider how the enterprises and unit have developed. They will look back at projections and compare performance, although the final assessment will be based upon what has actually happened and exists at the time of application, rather than whether it matches the original projections.

**3.3** Where a new dwelling is proposed due to the re-organisation of an existing enterprise, the Council will need a detailed explanation about why the needs of the enterprise cannot be met by other means. If expansion is taking place on a new or separate parcel of land from the main holding, it may be that this proposal will be considered as a new enterprise on that site and a temporary consent may be more appropriate (see section 2 of this SPD).

### Existing Functional Need

**3.4** A full assessment based on the actual enterprise is necessary. It will be relevant to consider how the enterprise has developed against original projections, as they formed the basis of the functional test accepted for a mobile home. It will normally be the case, but not always, that an enterprise for which a temporary permission was granted will, if it has developed as projected, meet the functional test. However, advances in technology or changes in management practices may occasionally, over time, obviate the need to live on site.

**3.5** It should not be assumed therefore, that the functional test will automatically be accepted. Independent analysis may be required.

**3.6** If an application is made for a permanent dwelling without, previously, a temporary consent, it will be necessary to explain how that functional need has been met in the past, and why such arrangements cannot continue. For applications for new dwellings based on extended holdings, it will be necessary to consider how that land was managed in the past and how its needs had been met previously. If a dwelling is essential for the proper functioning of the enterprise but no such on-site presence previously existed, was the enterprise being operated contrary to “proper” standards?

## The Full-time Test

**3.7** The requirement for the scale of the enterprise to be significant if a functional test is to be accepted, is underlined by the request (for a permanent dwelling) that **“the need relates to a full-time worker”** or one primarily employed (PPS7, Annex A paragraph 3 ii).

**3.8** Part-time enterprises do not meet the tests for a permanent dwelling. Equally, however, the fact that an enterprise needs more than one worker to run it does not mean that one or more dwellings will be permitted. Any workers may be able to be satisfactorily housed off site.

**3.9** To assess whether or not a need relates to a full-time/primarily-employed worker, reference is usually made to budget books <sup>(1)</sup> to estimate the amount of labour input an enterprise mix requires. Where budgeting books are not applicable, other estimations (e.g. from recorded hours) may be relevant.

**3.10** There is no clearly defined threshold of the amount of work that constitutes **“full time”** or **“primarily employed”**. Labour is often assessed in terms of Standard Man Days (SMD). 1 SMD is equivalent to 8 hours work. Hence 2000 hours work per annum, even if spread over 365 days (5½ hours per day) would be 250 SMD.

**3.11** In the Agricultural Wages Board Legislation, a standard 39 hour week less holiday entitlement amounts to about 225 SMD. Typically, an agricultural worker, including overtime, provides about 275 SMD per annum.

**3.12** In making the assessment, it is necessary to consider the amount of work carried out by the on-site worker. If an enterprise cuts silage on 20ha, for which the SMD/ha is 2.5, this amounts to 50 SMD per annum. If it is carried out by contractors it is not relevant to include it when calculating whether the need relates to a full-time worker. Also, such an activity can equally well be carried out by a non-resident worker.

**3.13** It is important to differentiate between the full-time test with the functional test. Hence a unit with a labour profile of five workers does not mean that five dwellings are needed. Indeed, it may be operated without any dwellings. However, a new dwelling where there is a functional need will not be permitted if the need only relates to a part-time worker.

## Financial Test Considerations

**3.14** For permanent dwelling applications, the unit and the activity concerned, must have been profitable and have financially sound prospects. It is expected that actual

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<sup>1</sup> The Farm Management Pocketbook published annually by Imperial College, London, or Agricultural Budgeting and Costing Book published bi-annually by ABC Ltd, Melton Mowbray

accounts, including the Trading and Profit and Loss and the Balance Sheet figures, be submitted for scrutiny. It is also expected that all the normal costs of an enterprise, including labour and purchase costs, be included.

**3.15** Many units involve a number of different enterprises, and either overall or specific profitability may not be sufficient to meet the policy tests. It is the unit and the activity concerned which must be profitable. If analysis shows that the activity for which a functional need is claimed is not profitable, or contributes a poor return on investment to an otherwise profitable business, or is reliant on contracts or specialist market outlets whose long term continuity cannot be assumed then a new dwelling may not be permitted. This would be because the activity providing the need did not have clear prospects of being sustained for a reasonable period of time.

### **Profit from the enterprise concerned**

PPS7 does not set a level of profitability. Rather it requires a realistic approach to profitability when considering the sustainability of the enterprise. At Terry's Wood Farm the Inspector analysed detailed financial data for five years. He concluded that off-farm contracting income should be excluded from the assessment.

(APP/E2205/A/06/2016798)

**3.16** The detailed financial information to satisfy the requirements of the test should be submitted as part of the application, as it is for the applicant to demonstrate that the test is met. There may be concerns about the confidentiality of financial information and potential applicants are advised to consult the Council about how the financial information is to be presented and held.

**3.17** Accounts and other sensitive information will normally be held in a restricted envelope not made available for public inspection. It will only normally be seen by the Council's officers, any consultant engaged by the Council or Members of the Planning Committee if the application is brought before them for decision.

**3.18** It will not usually be acceptable for only summaries of the accounts, or letters from accountants, to be provided.

**3.19** Financial information must be up to date. It may, therefore, be necessary to arrange for farm accounts to be produced swiftly after the year end and earlier than might otherwise have been the practice. As it is for the applicant to demonstrate that the financial test is met, the availability of up-to-date figures are essential.

**3.20** There is no defined threshold of what level of profitability meets the test. It will normally be expected that the threshold covers a reasonable market return for the



labour provided, and that there is sufficient income to sustain the costs of building and running a dwelling. This test needs to be a long-term view assessing whether an operation is sustainable and has a clear prospect of remaining sufficiently profitable to finance the dwelling costs and the employment of the person occupying it.

### Financially Sound

At Sough Lane, an established suckler cow herd had been profitable in recent years. The enterprise was, however, dependant to a significant degree upon subsidies, which were changing and their future was uncertain. Given this uncertainty the Inspector concluded that there was not the necessary surety that the operation was sustainable with a clear prospect of remaining profitable and financially sound.

(APP/P1045/A/04/1170123)

## Other Dwellings

**3.21** A new dwelling (temporary or permanent) will not be permitted if there is another dwelling, either on the unit or in the vicinity, which is suitable and available to meet the need. If there is a dwelling on the holding already then, unless there is a functional need for a second resident worker, it is unlikely that consent will be given for an additional worker's dwelling.

**3.22** Where there are buildings capable of conversion to a dwelling, the Council will normally prefer their conversion to the erection of a new dwelling, providing that the building for conversion is well related to the holding and enterprises. This is because the landscape impact of a barn conversion is usually less than from the erection of a new dwelling. If there are potential buildings available then it may be appropriate to discuss their suitability with the Council in advance of making a planning application. Conversion also has sustainability benefits by offering new uses for historic buildings and reducing energy and materials and the production of waste from new construction.

**3.23** There can often be a situation where there is an existing dwelling on the unit which is occupied by someone other than the person who is mainly responsible for providing on site supervision for the enterprise. In such circumstances a further dwelling is unlikely to be justified.

**3.24** A number of issues can arise, including:

- **Retirement** - PPS7 advises that the exemption in the system is not designed to provide retirement homes for farmers or others. Even if the proposed occupant of

the new dwelling is not the retiring farmer, it follows that a new dwelling will not be permissible simply because the previous key worker wishes to retire and remain in occupation of the existing house;

### Retirement

At High Bank Nurseries it was accepted that the nature of the enterprise required the need for one person to be readily available at most times. The Appellants wished to retire and continue living in their house, but build a new house for their son. Although the new house was not to be occupied by a retired worker, the Inspector concluded that “the proposal is for a new dwelling associated with retirement proposals and is therefore contrary to a main principle of national guidance”.

(APP/P1805/A/02/1083687)

- **Availability** - PPS7 advises that a new dwelling will not be permitted if there is another dwelling on the unit, or other accommodation in the area which is suitable and available. Where another dwelling is in the ownership of the holding it will normally be considered that such a dwelling is available for occupation, as it will be within the owner’s powers to make it available;
- **Suitability** - “suitability” has a number of components. It will be necessary to assess whether other existing accommodation is suitable due to location (e.g. proximity), size, value etc. Unless it can be shown that other available dwellings are not suitable, it will normally be expected that they should meet the needs of the farm rather than a new dwelling being developed;
- **Abuse** - the reason for the stringent tests is to detect abuse of the concession for new dwellings. It is made clear in PPS7 and the local plan policies that the sale of a dwelling (or its alienation), or sale of buildings suitable for conversion, notwithstanding financial pressures to do so, could constitute evidence of a lack of need.

**Abuse**

At Rye Park the farmers sold off the farmhouse in 2002 and then applied for a replacement. The Planning Inspector in 2006 concluded, on the matter of whether this constituted an abuse of the concession, that the Appellant's actions in selling the farmhouse and all buildings suitable for conversion "can only be construed as such an attempt."

(APP/X1118/C/06/2006111)

### 4 Design and Siting Considerations

#### Siting

**4.1** It is essential that the site selected is the most suitable to meet the identified functional need, whilst also being acceptable in landscape and access terms. Usually a dwelling will be sited close to the position for which a mobile home was permitted. Siting is less flexible when existing buildings are proposed for conversion, although the proposed dwelling must still be well related to the holding and enterprise and must satisfy the identified functional need. Applicants are advised to consult the Local Authority in advance if any other siting is proposed.

**4.2** The siting of any dwelling, whether temporary or permanent, would be expected to be visually as well as functionally well related to the main farmstead buildings. A site separated, divorced or remote from the existing farmstead buildings, accessed separately from those buildings or in a visually intrusive location will not be acceptable.

#### Siting

PPS7 requires a dwelling to be sited so as to meet the functional need and well related to existing farm buildings. The dwelling should be sited where the occupier can provide sufficiently close attention to the enterprises. The dwelling should not be on a site that is isolated or remote from the farmstead it is designed to serve. A position close to buildings and the entrance to them is usually preferred.

#### Access

**4.3** An access shared with the farm will be expected, provided that it is safe.

#### Size

**4.4** Dwellings should be of a size “commensurate” with the functional need and neither unduly large nor unusually expensive to construct in relation to the income the unit can sustain in the long term. Some guidance on size is given in the following box.

### Size of Dwelling

At South Petherton Fruit Farm, now known as Barcroft Hall, a very large dwelling (some 700m<sup>2</sup>) was permitted against Officer recommendation in 1987. In lifting the restriction in 2007, the Inspector commented that **“the size and value of the dwelling are likely to rule out any realistic possibility of a qualifying occupier being able to afford to buy or rent it.”** (APP/R3325/A/06/2016472). It is for this reason that the dwelling should be **“commensurate”**.

**4.5** The appropriate size for a new dwelling for a worker in agriculture, forestry or a rural business (i.e. the number of bedrooms) will depend on individual circumstances. However, it should be assumed that the size of dwelling permitted will not significantly exceed the normal size for new dwellings in the district. Typical sizes for general housing are 110m<sup>2</sup> for a 3-bed dwelling, or 145m<sup>2</sup> for a 4-bed dwelling (gross external floorspace). References to relevant appeal decisions are included in Appendix 5.

**4.6** Allowing for the particular needs associated with housing for agriculture (for example, boot room, utility, ground floor shower etc.), it is envisaged that an adequately sized dwelling could be provided with a gross external floor area of around 140m<sup>2</sup>. It is recognised that the principal dwelling on a holding may well have additional needs relating to office/administration space, and an indicative gross floor area of 165m<sup>2</sup> would normally be reasonable to meet such a requirement.

**4.7** It is suggested therefore that justification will need to be provided when a dwelling materially in excess of 140m<sup>2</sup> is applied for and that such applications will be carefully scrutinised. Each case will of course be assessed on its own merits in accordance with Government guidance and the policies of the Development Plan.

**4.8** Because new farm dwellings are often located on prominent sites they need to be suitably designed for their rural location. If a particular location requires a design that means that to achieve an appropriate internal size the external dimensions have to exceed those indicated above then this will be taken into account when negotiating a proposal.

### Design

**4.9** The design of the dwelling will need to be appropriate for its location. Design of new buildings must take account of the local landscape, vernacular buildings, local materials and features of local archaeological or historic importance. Planning Officers will be able to give advice on design. The Council publishes separate SPDs to provide advice on design matters.

**4.10** Conversion of a sound existing building, if an appropriate one exists, offers

advantages over new construction in terms of visual impact on the landscape and will normally be a preferred option to new build, providing that the site of any such building is visually and functionally well related and forms part of the existing farmstead.

**4.11** Applications to convert existing buildings should consider protected species including bats and barn owls that may be present. An ecological survey will be required prior to the submission of a planning application. It may be appropriate to discuss the suitability of a building for conversion in advance of making a planning application. For new buildings, opportunities to enhance biodiversity will be encouraged. Where landscaping conditions are imposed, new landscaping should incorporate indigenous planting to enhance local biodiversity networks.

**4.12** All new buildings should consider how their siting, orientation and design could contribute to the achievement of sustainable development. In North Devon, Policy DVS1A identifies the principles of sustainable design and construction which could be incorporated. Provision of on-site renewable energy will be encouraged and could provide a practical solution to dwellings that are temporary and/or off-grid. Some holdings will have their own sustainable source of wood for use as a source of fuel for heating.

**4.13** All new dwellings should also be 'climate proofed' to cope with potential extreme weather events, especially in exposed and remote locations. The extent of impermeable areas should be minimised and sustainable drainage systems provided to reduce surface water runoff. The principles of grey water recycling, rainwater harvesting, green roofs and compost toilets will all be supported.

**4.14** Conversion of existing farm buildings will reduce construction waste. For new buildings, reuse of appropriate existing materials will facilitate more sustainable construction and help new buildings to fit into the landscape. Other opportunities to minimise construction and/or operational waste will be encouraged.

**4.15** For mobile homes/temporary dwellings, style and design options are more limited. Nevertheless, attempts must be made to find a suitable size and location along with an appropriate design.

**4.16** All dwellings will be subject to normal planning considerations associated with new development. A list of relevant policies covering different aspects of design is set out in Appendix 2.



## 5 Conditions and Legal Agreements

### Use of Occupancy Conditions

**5.1** If an agricultural dwelling is considered to meet the tests, whether for a temporary or permanent dwelling, it will be granted subject to an occupancy condition. This restriction limits occupation to those wholly or mainly working, or last working, in the enterprise, or in agriculture or forestry in the locality, and to any widow or widower of such a person, and any resident dependants. This occupancy condition is intended to ensure that the property remains available to meet the needs for which it is permitted, and locally if that specific need no longer exists. The purpose of the condition is to avoid a proliferation of dwellings in the open countryside .

**5.2** If the dwelling is for a rural business, a similar occupancy condition will be imposed.

**5.3** If the need relates to an additional dwelling on a holding, the local authority will normally impose similar conditions on any existing dwellings on the unit which are not so conditioned. It will ensure that, if there is a need for an additional dwelling, all existing dwellings are conditioned so as to ensure that they are kept available for meeting the need they are designed to meet, for as long as it exists.

**5.4** The Local Authority will also normally require applicants to enter into a legal obligation to prevent separation of the dwelling and buildings from the land (or vice versa) without the express consent of the local authority. This restriction is intended to prevent fragmentation of viable farm units for which a dwelling has been permitted. In certain cases, a legal obligation may also be required to secure other works necessary for the development of the enterprise (for example, the erection of farm buildings). Applicants are advised to discuss this issue with Planning Officers in advance of any application and take their own legal advice as appropriate.

**5.5** Planning permissions usually are subject to a time limit requiring the development to commence within three years. In the case of mobile homes or essential dwellings (to meet existing essential needs), it may be reduced to one or two years, reflecting the special circumstances put forward. Where consents are not implemented, they will not be renewed without thorough scrutiny. The failure to implement a consent may be taken as evidence of a lack of need for a residential presence.

**5.6** The Council will also monitor the occupation of essential workers' dwellings periodically. For temporary consents it is important to ensure that they are occupied. An unoccupied mobile home may be taken as evidence of a lack of an essential need to live on site. Permanent dwellings occupied other than in compliance with their occupancy conditions will normally be subject to enforcement action.

**5.7** Where a dwelling is subject to an occupancy condition, and farm diversification

is sought, care will need to be taken to avoid a breach of any condition. You are advised to discuss this with the local authority in advance of diversifying.

### Applications to Vary or Remove Occupancy Conditions

**5.8** Any application to remove a restrictive occupancy condition for any dwelling in the countryside will need to be scrutinised carefully. It will be necessary to demonstrate that the need for which the dwelling was approved originally, no longer exists. The separation of such a dwelling from the surrounding land or business would need to demonstrate that it is no longer required in connection with those purposes, and there is unlikely to be any future need, because a future application for a new dwelling is unlikely to be permitted.

**5.9** An applicant would be expected to market the dwelling for a sufficient/reasonable period at a realistic price (normally a discount of at least 35% against open market price) in order to establish whether it could meet the existing functional needs of a local farm or rural business, to which it is both suitable and available. Evidence demonstrating how this requirement has been investigated will need to be included to support any application to vary or remove a restrictive occupancy condition.

**5.10** Policy HSG11 of the North Devon Local Plan (see Appendix 1) indicates that when the absence of current and future need for a farm or rural business dwelling has been demonstrated, then the occupancy restriction will be varied rather than removed entirely. It will be replaced by a local occupancy planning condition or legal agreement to retain the dwelling to meet local community needs in order to provide more affordable housing. This requirement will apply even if the application to remove the occupancy restriction is sought retrospectively.

## 6 The Planning Application Process

### Presenting an Application

**6.1** A high proportion of planning applications are invalidated before registration due to avoidable errors. At a very basic level, therefore, it is important to check that application forms are completed and signed, plans at the correct scale are attached, and certificates are signed. Given the need to take into account the above noted considerations in determining applications for agricultural or other rural based dwellings, applicants and their agents are strongly encouraged to informally discuss such proposals prior to the submission formal planning application.

**6.2** As outlined in this SPD, the issues relevant to the merits of new essential workers' accommodation are many and complex. The policy tests must be met in all cases, and several refer to the need for "clear evidence". Accordingly, applications need to be accompanied by sufficient information to provide that evidence.

**6.3** It is usual for applications to be accompanied by detailed appraisals by suitably qualified and experienced professional advisors, assessing the enterprises or proposals against the relevant tests. At the very least it will be expected that an application is accompanied by evidence and analysis against the relevant policy tests, and independent evidence if required.

**6.4** It may be that a professional advisor setting out the necessary information will also submit the planning application. It will be necessary to consider the extent to which that might affect his or her independence.

**6.5** Where a consultant provides an appraisal, PPS7 advises that it should be confined to a factual statement and evaluation, and should not make a recommendation for or against the application.

**6.6** The planning application and supporting material should be presented:

- in an honest and complete manner;
- accompanied by sufficient information for the Local Authority to assess the application; and
- accompanied by suitable plans.

**6.7** Appendix 3 sets out a checklist for good practice.

**6.8** There may also be a need for a Design and Access Statement. Separate advice is available from the Council.

### The Council's Action on Receipt

**6.9** The Council may submit a planning application and material to an independent consultant engaged by them, for assessment. He or she may consider it necessary to visit the site and interview the applicant.

**6.10** Decisions are normally issued on planning applications within 8 weeks. Separate guidance on the Council's handling of planning applications, on making your views known and presenting views to planning committees, is available from the Council.

## 7 Conclusions

**7.1** This SPD can only give an overview of what is a complex area of planning law, policy and interpretation. Professional advisors and planning officers may be able to give further advice.

**7.2** Appendix 4 sets out a number of questions (with answers) covering a range of matters related to the topic, which may assist.

**7.3** It is important that all applications for new essential workers' residential accommodation are scrutinised thoroughly with the aim of detecting abuse. It is equally important that applications are presented clearly and comprehensively, recognising that it is the Applicant's responsibility to provide evidence to enable an assessment against the detailed policy and guidance set out at national and local levels.

### 8 Monitoring and Review

**8.1** The adoption of this SPD will mean that it can provide guidance throughout the timescale of the development plan but may need to be reviewed if circumstances or Government policy guidance changes significantly.

**8.2** The test of effectiveness of the guidance will be whether the objectives have been met, which will entail monitoring planning permissions granted for new agricultural, forestry and other essential occupational dwellings. It will also include compliance with conditions and/or legal agreements after the completion and occupation of the dwellings.

The views and opinions set out in this SPD are intended for guidance and assistance. Applicants may consider taking professional or legal advice in preparing and presenting applications.

This SPD was drafted by Kernon Countryside Consultants in conjunction with North Devon Council.

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### Appendix 1 - Key Policies Relating to Agricultural, Forestry and Other Essential Occupational Dwellings

#### Planning Policy Statement 7: Sustainable Development in Rural Areas

##### Annex A: Agricultural, Forestry and Other Occupational Dwellings

1. Paragraph 10 of PPS7 makes clear that isolated new houses in the countryside require special justification for planning permission to be granted. One of the few circumstances in which isolated residential development may be justified is when accommodation is required to enable agricultural, forestry and certain other full-time workers to live at, or in the immediate vicinity of, their place of work. It will often be as convenient and more sustainable for such workers to live in nearby towns or villages, or suitable existing dwellings, so avoiding new and potentially intrusive development in the countryside. However, there will be some cases where the nature and demands of the work concerned make it essential for one or more people engaged in the enterprise 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 enterprise concerned and not on the personal preferences or circumstances of any of the individuals involved.

2. It is essential that all applications for planning permission for new occupational dwellings in the countryside are scrutinised thoroughly with the aim of detecting attempts to abuse (eg through speculative proposals) the concession that the planning system makes for such dwellings. In particular, it will be important to establish whether the stated intentions to engage in farming, forestry or any other rural-based enterprise, are genuine, are reasonably likely to materialise and are capable of being sustained for a reasonable period of time. It will also be important to establish that the needs of the intended enterprise require one or more of the people engaged in it to live nearby.

##### Permanent Agricultural Dwellings

3. New permanent dwellings should only be allowed to support existing agricultural activities on well-established agricultural units, providing:

- i. there is a clearly established *existing* functional need (see paragraph 4 below);
- ii. the need relates to a *full-time* worker, or one who is primarily employed in agriculture and does not relate to a part-time requirement;
- iii. the unit and the agricultural activity concerned have been established for at least three years, have been profitable for at least one of them, are currently financially sound, and have a clear prospect of remaining so (see paragraph 8 below);
- iv. the functional need could not be fulfilled by another existing dwelling on the unit, or any other existing accommodation in the area which is suitable and available

## Appendix 1 - Key Policies Relating to Agricultural, Forestry and Other Essential Occupational Dwellings

for occupation by the workers concerned; and

- v. other planning requirements, e.g. in relation to access, or impact on the countryside, are satisfied.

4. A *functional test* is necessary 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:

- i. in case animals or agricultural processes require essential care at short notice; and
- ii. to deal quickly with emergencies that could otherwise cause serious loss of crops or products, for example, by frost damage or the failure of automatic systems.

5. In cases where the local planning authority is particularly concerned about possible abuse, it should investigate the history of the holding to establish the recent pattern of use of land and buildings and whether, for example, any dwellings, or buildings suitable for conversion to dwellings, have recently been sold separately from the farmland concerned. Such a sale could constitute evidence of lack of agricultural need.

6. The protection of livestock from theft or injury by intruders may contribute on animal welfare grounds to the need for a new agricultural dwelling, although it will not by itself be sufficient to justify one. Requirements arising from food processing, as opposed to agriculture, cannot be used to justify an agricultural dwelling. Nor can agricultural needs justify the provision of isolated new dwellings as retirement homes for farmers.

7. If a functional requirement is established, it will then be necessary to consider the number of workers needed to meet it, for which the scale and nature of the enterprise will be relevant.

8. New permanent accommodation cannot be justified on agricultural grounds unless the farming enterprise is economically viable. A *financial test* is necessary for this purpose, and to provide evidence of the size of dwelling which the unit can sustain. In applying this test (see paragraph 3(iii) above), authorities should take a realistic approach to the level of profitability, taking account of the nature of the enterprise concerned. Some enterprises which aim to operate broadly on a subsistence basis, but which nonetheless provide wider benefits (e.g. in managing attractive landscapes or wildlife habitats), can be sustained on relatively low financial returns.

9. Agricultural dwellings should be of a size commensurate with the established functional requirement. Dwellings that 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 be permitted. It is the requirements of the enterprise, rather than those of the owner or occupier, that are relevant in determining the size of dwelling that is appropriate to a particular holding.

10. Local planning authorities may wish to consider making planning permissions subject to conditions removing some of the permitted development rights under part 1 of the Town and Country Planning (General Permitted Development) Order 1995 for development within the curtilage of a dwelling house. For example, proposed extensions could result in a dwelling whose size exceeded what could be justified by the functional requirement, and affect the continued viability of maintaining the property for its intended use, given the income that the agricultural unit can sustain. However, it will always be preferable for such conditions to restrict the use of specific permitted development rights rather than to be drafted in terms which withdraw all those in a Class (see paragraphs 86-90 of the Annex to DOE Circular 11/95).

11. Agricultural dwellings should be sited so as to meet the identified functional need and to be well-related to existing farm buildings, or other dwellings.

### **Temporary Agricultural Dwellings**

12. If a new dwelling is essential to support a new farming activity, whether on a newly-created agricultural unit or an established one, it should normally, for the first three years, be provided by a caravan, a wooden structure which can be easily dismantled, or other temporary accommodation. It should satisfy the following criteria:

- i. clear evidence of a firm intention and ability to develop the enterprise concerned (significant investment in new farm buildings is often a good indication of intentions);
- ii. functional need (see paragraph 4 of this Annex);
- iii. clear evidence that the proposed enterprise has been planned on a sound financial basis;
- iv. the functional need could not be fulfilled by another existing dwelling on the unit, or any other existing accommodation in the area which is suitable and available for occupation by the workers concerned; and
- v. other normal planning requirements, e.g. on siting and access, are satisfied.

13. If permission for temporary accommodation is granted, permission for a permanent dwelling should not subsequently be given unless the criteria in paragraph 3 above are met. The planning authority should make clear the period for which the temporary permission is granted, the fact that the temporary dwelling will have to be removed,

## Appendix 1 - Key Policies Relating to Agricultural, Forestry and Other Essential Occupational Dwellings

and the requirements that will have to be met if a permanent permission is to be granted. Authorities should not normally grant successive extensions to a temporary permission over a period of more than three years, nor should they normally give temporary permissions in locations where they would not permit a permanent dwelling.

### Forestry Dwellings

14. Local planning authorities should apply the same criteria to applications for forestry dwellings as to those for agricultural dwellings. The other principles in the advice on agricultural dwellings are equally relevant to forestry dwellings. Under conventional methods of forestry management, which can involve the use of a peripatetic workforce, new forestry dwellings may not always be justified, except perhaps to service intensive nursery production of trees.

### Other Occupational Dwellings

15. There may also be instances where special justification exists for new isolated dwellings associated with other rural based enterprises. In these cases, the enterprise itself, including any development necessary for the operation of the enterprise, must be acceptable in planning terms and permitted in that rural location, regardless of the consideration of any proposed associated dwelling. Local planning authorities should apply the same stringent levels of assessment to applications for such new occupational dwellings as they apply to applications for agricultural and forestry workers' dwellings. They should therefore apply the same criteria and principles in paragraphs 3 - 13 of this Appendix, in a manner and to the extent that they are relevant to the nature of the enterprise concerned.

### Occupancy Conditions

16. Where the need to provide accommodation to enable farm, forestry or other workers to live at or near their place of work has been accepted as providing the special justification required for new, isolated residential development in the countryside, it will be necessary to ensure that the dwellings are kept available for meeting this need for as long as it exists. For this purpose planning permission should be made subject to appropriate occupancy conditions. DOE Circular 11/95 gives further advice and provides model occupancy conditions for agricultural dwellings and for other staff accommodation.

17. Changes in the scale and character of farming and forestry may affect the longer-term requirement for dwellings for which permission has been granted subject to an agricultural or forestry occupancy condition. Such dwellings, and others in the countryside with an occupancy condition attached, should not be kept vacant, nor should their present occupants be unnecessarily obliged to remain in occupation simply by virtue of planning conditions restricting occupancy which have outlived their usefulness. Local planning authorities should set out in LDDs their policy approach to the retention or removal of agricultural and, where relevant, forestry and other forms

of occupancy conditions. These policies should be based on an up to date assessment of the demand for farm (or other occupational) dwellings in the area, bearing in mind that it is the need for a dwelling for someone solely, mainly or last working in agriculture or forestry in an area as a whole, and not just on the particular holding, that is relevant in the case of farm or forestry workers' dwellings.

### **Information and Appraisals**

18. Planning authorities should be able to determine most applications for occupational dwellings in the countryside, including cases involving the imposition or removal of occupancy conditions, on the basis of their experience and the information provided by the applicant and any other interested parties. If this is not the case, agricultural or other consultants may be able to give a technical appraisal. This should be confined to a factual statement of the agricultural, or other business considerations involved and an evaluation of the specific points on which advice is sought; no recommendation for or against the application should be made.

### **North Devon Local Plan 1995 – 2011**

#### **Housing in the Countryside**

7.51 Government advice in PPG7, 'The Countryside – Environmental Quality and Economic and Social Development', states that one of the few exceptions when new housing in the countryside may be justified is for accommodation required to enable farm or forestry workers to live at or in the immediate vicinity of their place of work. To avoid attempts to abuse such a concession, all proposals must satisfy a range of criteria including a 'functional' and a 'financial' test. The purpose of the former test is to establish an essential functional need for a worker to live on the site based on a period of employment covering a standard working year. Such a need may be justified where, for example, either livestock or agricultural processes require essential care and attention at short notice. The purpose of the financial test is to show that the farming enterprise is economically viable. PPG7 provides explicit advice on this matter by stating that new permanent accommodation should only be allowed where:-

- the unit and agricultural activity concerned have been established for at least 3 years;
- it has been profitable for at least one of them and is financially sound; and
- it has a clear prospect of remaining financially sound.

(NOTE: PPG7 has subsequently been replaced by PPS7, but the impact of this policy has not been significantly altered)

## Appendix 1 - Key Policies Relating to Agricultural, Forestry and Other Essential Occupational Dwellings

7.52 In assessing the need for a dwelling, particularly in cases where there is concern about possible abuse, the history of the holding may be investigated in order to establish the recent pattern of both the use of land and buildings. The recent sale of any dwellings or buildings suitable for conversion from the holding may, for example, be taken as evidence of a lack of need.

7.53 Where a need has been established, existing accommodation and buildings suitable for conversion should be utilised if possible, in preference to new build. When the construction of a new dwelling is proven to be essential, its siting should be appropriately related to the whole of the holding, having regard to the agricultural or forestry purposes for which it is intended. Where possible, the siting and design should be closely related to existing buildings and respect the character of the surrounding countryside. In addition, the size of the dwelling should be commensurate with the established functional requirement. The financial test should provide evidence to determine the size of dwelling that the holding or enterprise could sustain. Control may be retained over the size of the dwelling by removing permitted development rights.

7.54 More detailed advice regarding agricultural dwellings is contained in the Council's Supplementary Planning Guidance 'Planning Control and Agricultural Workers Dwellings' [**Note: now superseded by this guidance**]. For the purposes of Policy HSG9, holding is defined as the land relating to either a farm or forestry enterprise.

### **Policy HSG9 (Permanent Dwellings in the Countryside)**

1. A new dwelling in the countryside will not be permitted unless:-

- a. there is a functional need for an agricultural or forestry worker to live on the holding;
- b. the holding has been established for at least three years, has been profitable for at least one of them, is currently financially sound and has clear prospects of remaining so;
- c. there is no suitable existing or alternative accommodation available, either on the holding or in the locality including buildings suitable for conversion;
- d. the proposed dwelling is related to the whole of the holding and should, where possible, be closely related to existing buildings in terms of its siting and design; and
- e. the size of the dwelling is no larger than can be justified by the established need.

2. A new dwelling permitted in the countryside, together with any existing accommodation associated with the activities on a holding, will be subject to a condition restricting its occupation to those people solely or mainly employed or last employed in agriculture or forestry in the locality, a widow or widower of such a person and any resident dependents.

7.54A Government guidance also accepts that, where special justification exists, a new dwelling in the countryside may be acceptable where it is required in association with a rural based enterprise. Such dwellings must relate to an enterprise which is permitted in that rural location. It should satisfy the same 'functional' and 'financial' tests applying to applications for agricultural and forestry workers' dwellings (see paragraph 7.51) in a manner and to the extent that they are relevant to the nature of the enterprise concerned.

### **Temporary Accommodation on New Farm and Forestry Enterprises**

7.55 Where accommodation is required to support a new or recent farm or forestry activity either on a newly created unit or on an established one, it should be provided for at least the first three years by temporary accommodation such as a caravan or mobile home. Such temporary accommodation should be sited so that it is related to the whole of the building having regard to the agricultural or forestry purposes or which



## Appendix 1 - Key Policies Relating to Agricultural, Forestry and Other Essential Occupational Dwellings

it is intended. However, planning permission will only be granted where there is clear evidence of the functional need for accommodation, the enterprise has been planned on a sound financial basis and there is a firm intention and ability to develop the business such as a significant investment in new farm buildings.

7.56 As a viable unit can generally be established within three years, successive extensions to a temporary permission beyond this period will not normally be granted. Permission will not be granted where the functional need for accommodation can be provided by an existing dwelling elsewhere. Temporary permissions will not be granted in locations where permission would normally be refused on other planning grounds including siting and access.

### **Policy HSG10 (Temporary Accommodation on New Farm or Forestry Enterprises)**

1. where accommodation is required for a new or recent farming or forestry activity, it will only be permitted where:-

- a. the accommodation is of a temporary nature;
- b. there is clear evidence of a firm intention and ability to develop the enterprise concerned;
- c. there is a functional need for a worker to live on the holding;
- d. there is clear evidence that the proposed enterprise has been planned on a sound financial basis;
- e. there is no alternative accommodation available either on the holding or in the locality; and
- f. the temporary accommodation is appropriately related to the whole of the holding.

2. temporary accommodation in the countryside will be subject to a condition restricting its occupation to those people solely or mainly employed or last employed in agriculture or forestry in the locality, a widow or widower of such a person and any resident dependents.

### **Occupancy Conditions**

Where permission is given for residential development in the countryside in accordance

with Policies HSG9 or HSG10, a condition will be imposed restricting its occupancy to those who are, or have recently been, employed in agriculture or forestry including their dependants. When granting planning permission for such a new dwelling, an occupancy restriction may also be imposed on any existing accommodation on the holding clearly associated with the activities, but not subject to such a tie. This action will help protect the countryside against the risk of pressures for new housing. In addition, a planning obligation may also be used to tie a new agricultural dwelling to the holding or adjoining farm buildings in order to prevent them being sold off without the benefit of planning permission.

Once an occupancy condition has been imposed, it will only be removed if it can be demonstrated that there is no long-term need for the dwelling to accommodate persons in agriculture or forestry within the locality. For the purposes of Policies HSG9, HSG10 or HSG11, locality is defined as the parish and adjoining parishes in which the dwelling is situated. As part of the assessment to establish the existing functional need for such a dwelling, the property should be properly marketed for a reasonable period at a price that reflects the occupancy restriction. The reasonable period for marketing must take account of both the restricted market for the dwelling and the prevailing state of the economy, but should normally be for a period of at least 12 months. This period could be relaxed where a housing need exists and the dwelling can be sold, let or licensed directly to a registered social landlord.

Where there is a clear justification to remove an agricultural or forestry restriction and evidence of housing need in the locality, the condition will normally be modified rather than lifted to retain some control over the occupancy of the dwelling. In these circumstances, the original condition will be modified so that the occupation of the dwelling is limited to meeting the needs of the local community as defined at paragraph 7.23.

Restricting former agricultural and forestry workers' dwellings in this manner will help ensure there is a stock of more affordable housing to meet the needs of the local community and any housing requirements that may arise from rural diversification schemes. This approach will also safeguard the principles of the settlement strategy by restricting the availability of dwellings in the countryside.

### **Policy HSG11 (Occupancy Conditions)**

1. The removal of an occupancy restriction from a dwelling in the countryside will not be permitted unless it is demonstrated that:-

- a. there is no longer a functional need for the dwelling on the holding or in the locality; and
- b. the dwelling has been suitably marketed for a period of at least twelve consecutive months at a price that reflects the occupancy restriction unless an RSL is directly involved in the management of the property and it meets an identified need in the community.

2. Where the removal of the original restriction is justified in accordance with the criteria above and it has been demonstrated that there is a housing need in the locality, the original restriction will be modified to limit the occupancy of the dwelling to meet the needs of the local community.

## Appendix 2 - Planning Policy Framework

### Design

Government Guidance	PPS1, PPS3 and the document 'By Design: Urban Design in the Planning System - Towards Better Practice' and 'Better Places to Live: By Design'
Devon Structure Plan 2001 - 2016	CO6
North Devon Local Plan 1995 - 2011	DVS1, DVS1A, DVS2, DVS3
Draft Regional Spatial Strategy	Development Policy E

### Sustainable Development

Government Guidance	PPS1, Draft Supplement to PPS1 (Planning for Climate Change, PPS3, PPS22 and the document 'Code for Sustainable Homes - A Step Change in Sustainable Homebuilding Practice
Devon Structure Plan 2001 - 2016	ST1, CO11
North Devon Local Plan 1995 - 2011	DVS1A, ECN5, ECN15
Devon County Waste Local Plan	WPC4
Draft Regional Spatial Strategy	SD1, SD2, SD4, W4, REC5, Development Policy H.

### Travel and Transport

Government Guidance	PPS3, PPG13
Devon Structure Plan 2001 - 2016	TR3, TR4, TR5, TR7, TR9 and 'Devon Local Transport Plan'
North Devon Local Plan 1995 - 2011	TRA1A, TRA6, TRA7, TRA8

### Historic Environment

Government Guidance	PPG15, PPG16
Devon Structure Plan 2001 - 2016	CO7, CO8
North Devon Local Plan 1995 - 2011	ENV14, ENV16, ENV17, ENV18
Draft Regional Spatial Strategy	ENV4

### Biodiversity

Government Guidance	PPS9
Devon Structure Plan 2001 - 2016	CO9, CO10
North Devon Local Plan 1995 - 2011	ENV8, ENV9, ENV10, ENV11, ENV12
Draft Regional Spatial Strategy	ENV4

### Flooding

Government Guidance	PPS25
Devon Structure Plan 2001 - 2016	CO13
North Devon Local Plan 1995 - 2011	DVS6, DVS7
Draft Regional Spatial Strategy	F1

### Landscape

Government Guidance	PPS7
Devon Structure Plan 2001 - 2016	CO1, CO2, CO3, CO4, CO5
North Devon Local Plan 1995 - 2011	ENV2, ENV3, ENV4, ENV5, ENV6
Draft Regional Spatial Strategy	ENV2, ENV3

### Appendix 3 - Checklist for Good Practice

#### **All Applications**

Completed and signed application forms

Completed and signed certificate(s)

Completed agricultural form

Relevant fee

Plan and elevations showing proposed buildings

Plan showing site

Plan showing extent of owned and occupied land.

Design and Access Statement

#### **Temporary Dwellings**

Detailed explanation of proposed enterprises

Analysis of the relevant policy tests

Business Plan and Budgets

#### **Permanent Dwellings**

Description of enterprises operated

Analysis of the relevant policy tests

Full accounts for the previous 3 years

Description or plans of dwelling proposed

Size of dwelling proposed (this may be made a condition)

Landscaping proposed

### Appendix 4 - Relevant Questions and Answers

#### **I am considering a new enterprise. I propose to buy some land. Should I apply for buildings first?**

If you are considering an enterprise for which you expect there will be a need for a dwelling, you should try to find land with a dwelling and (ideally) buildings already attached. For example, a parcel of land with an agriculturally restricted dwelling would meet your needs, or a parcel of land close to where you currently live. Not only will this avoid a complex and often expensive planning application process, it will also avoid the need to live in a mobile home for the first three years.

If you are buying or have bought a block of land without buildings, you should ideally apply for buildings and a mobile home at the same time.

If you decide to apply for a building or buildings on their own, the local authority can legitimately ask for information about your proposed enterprises. They may question or refuse the buildings if they consider it will lead to pressure for a new dwelling. They may ask you to confirm that you will not need a dwelling for the enterprises you explain will be in the buildings.

#### **What enterprises need dwellings?**

Many enterprises can operate perfectly well without a dwelling. It is for each application to provide evidence of a need to live on site, and it would be inappropriate for this SPD to list such enterprises.

However, dwellings will rarely (if ever) be needed for forestry, livery, arable and outdoor cropping, most horticultural, free-range pigs or poultry, sheep and diversified enterprises.

Security of livestock can contribute to the need to live on site, but cannot justify a dwelling. Other security needs (e.g. to stop theft) should be addressed by other means, and will not warrant a dwelling.

#### **How much profit do I need to make?**

The level of profit that meets the financial test will vary depending upon the structure of the business, the amount of unpaid labour, other investment in the business and the likely cost of the dwelling.

The purpose of the test is to assess whether or not the enterprise is reasonably likely to be sustained for a reasonable period of time.

At the very least the enterprise should be capable of providing a market return for the labour put in. For there to be a need for a dwelling, out-of-hours and night-time work



is to be expected, so comparison to average earnings rather than minimum agricultural wages, would be helpful.

Additionally, there will be other costs to be met including future investment and the construction of a dwelling.

### **What size of house can I have?**

Many applicants propose large dwellings for farmhouses. Yet many farm businesses generate only modest profits. The size should be the minimum reasonable to meet the needs, and must be capable of being afforded now and in the long-term by the enterprise.

If a detached garage is proposed, you will not be permitted to convert this to extra living space without further consent from the Council (see below). You will usually be permitted to include a farm office and utility room in the dwelling. Normally a condition will remove your permitted development rights to extend the dwelling.

If you wish to extend a restricted essential dwelling, you may be asked for accounts. PPS7 guidance is that dwellings should not be unusually large in relation to long-term income. Extensions may result in a dwelling whose size exceeds what can be justified by the functional need and affect the continued viability of maintaining the property for its intended use.

If you chose to build new instead of convert existing buildings, the Council may refuse future applications for residential conversion of those buildings.

### **What about rented land?**

Many enterprises rent land, either on short or long-term arrangements. In such cases, if that land relates to the activity for which residential accommodation is sought, or otherwise relates to profit (projected or actual), the Local Authority may seek full details about the tenure.

The risk and functional/financial effect of that land not being available will be considered. The land will not usually be included in a s106 legal agreement. The long-term prospects for the holding, and thus the need for the dwelling, will be considered with particular care.

### **My parents plan to leave me the farm and my sibling the house. Can I have a new dwelling?**

This is an area of particular complexity. PPS7 advises clearly that the sale of a dwelling or buildings suitable for conversion could constitute evidence of a lack of agricultural need. Sale and related transactions may be investigated. Generally speaking if a farm dwelling has been sold or gifted away from the farm buildings, this will be considered

as evidence that there is no functional need (hence the alienation) and no new dwelling will be permitted. Other ways to divide estates between siblings should be investigated.

### **What constitutes abuse?**

Deliberate sale or alienation of a dwelling from a holding and then an application for a replacement will be considered an abuse.

Proposals for a new enterprise which gain consent for a dwelling but never materialise will be considered an abuse. The provisions of PPS7, requiring a three-year temporary period followed by a re-assessment before a permanent dwelling will be permitted, should limit the opportunity for such abuses.

Obtaining consent for a mobile home and developing an enterprise but not living in the mobile home, will be considered as evidence that in reality there is no essential need to live on site (even if such a need was previously accepted).

### **Can I get my occupancy condition lifted?**

The removal of occupancy conditions will only be considered if there is evidence that it no longer serves a need on the farm or in the area. It will normally be expected that you offer the dwelling for sale for a realistic period of time, at a realistic price. Lotting up of dwellings for sale separate from the farmland and buildings will not represent a realistic assessment of whether there is still a need for the dwelling in the area. The farm should be offered as a whole.

### **Will Planning Officers give advice?**

Yes. Planning Officers welcome pre-application discussions.

### Appendix 5 - Relevant Appeal Decisions

Extracts from appeal decisions within North Devon District and elsewhere highlight a number of issues relevant to agricultural and other rural dwellings.

#### **Functional Need**

“However, labour needs alone are not sufficient to justify a new dwelling in the countryside...MAFF gave a view...that the nature of the operations carried out...are not so intensive as to require the full time attendance of a resident worker, but could give rise only to a seasonal need to cover lambing, which could be met by stationing a caravan at the farm...furthermore, it is significant that the original farmhouse...was sold off separately, leaving your client's land devoid of residential accommodation...having regard to the aims of paragraph E12 of PPG7 to avoid the fragmentation of farms, I consider that this factor adds weight to my foregoing conclusion, even though I recognise that your client found himself in his present situation as a result of economic circumstances largely beyond his control”. (T/APP/X1118/A/92/198154/P8 dated 6 April 1992).

#### **Seasonal Need**

“The only agricultural livestock are sheep and the holding is managed so that lambing occurs in two peaks, in February and April, and the overall lambing period is between three and four months. The average age of the ewes is relatively low, and in my view this might add to some extent to the work required during lambing, but would not significantly extend the holding. I accept that an on-site presence would be desirable during this period, but any accommodation required for the lambing season could be of a temporary nature, such as a touring caravan, which could be removed from the site at other times...but not essential for the proper functioning of the enterprise for one or more workers to be readily available at most times”. (APP/X1118/A/03/1114252 dated 19 November 2003).

#### **Fragmented Holdings and Rented Land**

The need for any agricultural justification to relate solely to the main farmstead of any enterprise and not to off-land or fragmented holdings is highlighted in the cases noted below. The general concern is highlighted with the advice of one Inspector “there is a need for great caution in considering the location of and need for dwellings to serve holdings which comprise several scattered parcels of land. My caution is founded on national policy...”

On a related issue the need for any agricultural justification to be based solely on the viability of owned land, and not, as a general rule, on tenanted or otherwise unsecured land, is highlighted by the appeal decision which stated:

“...to permit a dwelling on one area might well give rise to pressure for a further dwelling on the other, off-lying area in order to facilitate its management. Alternatively, it is quite conceivable that the appeal site could be severed from the tenanted lands and subsequently by the addition of a relatively restricted owner-occupied area to the tenanted lands, history could repeat itself. A similar case could then be made out for another dwelling elsewhere...”

“However, the farm is isolated from the main farm at Bishops Tawton and although you say that it is large enough to accommodate sufficient stock to justify a resident worker in its own right that use has yet to be commenced or the additional worker taken on. I appreciate that the availability of a dwelling could be attractive to a new worker but I am conscious of the Council’s concerns about the proliferation of dwellings that can result from the fragmentation of farms and that there are already two houses at Hayne. I understand the wish of Mr Downs’ parents to remain at Hayne and that the future of the farmhouse is in the hands of a trust involving both his mother and uncle but am concerned that the erection of an additional dwelling could result in the long term separation of that building from the farm. In all the circumstances of this case I consider that until the continuing viability of the operation at Dinnaton has been proven it would be premature to allow the erection of a permanent dwelling on that land”. (T/APP/G1115/A/89/123785/P3 dated 16 November 1989)

“The plans submitted with the application show that the land owned and farmed by your client is disjointed and spread over a large area. At present this land is farmed from Warren House Farm which is very nearly at the northern extremity of the holdings. The proposed site for a bungalow is also near the northern end of the holdings and I cannot see that it would provide a marked benefit to the operation of a farm”. (T/APP/G1115/A/87/66851/P4 dated September 1987).

“With the present scatter of the land he farms, your client appears to me to be as suitably placed in his present dwelling for the general management of the holding as he would be if living on the site. According to your representations he has been farming the land successfully for 15 years” (T/APP/5178/A/81/01922/G5 dated 3 June 1981).

### **Financial Viability**

“In order to satisfy the financial test it is therefore necessary to consider the profitability, financial soundness and prospects of the unit and of the agricultural activity in a largely impersonal and objective way. In my view it is only in this way that the financial test will be sufficient rigorous to ensure that the strict control and the thorough scrutiny considered necessary by PPG7 is able to be exercised. The utility of the financial test would be questionable unless it relates specifically to the unit and the activity, and unless it includes all the normal costs of an enterprise, including labour and purchase costs...” (APP/P0810/A/99/1016117/P2 dated 27 July 1999)

### Other Dwellings

“From the representations I understand that the house was sold, separately from the house, either because the house was too large, or to release money to pay out on a quarter share owned by others...however, both these arguments relate to a personal need and not an agricultural need and it is these personal needs that have resulted in the requirement for a dwelling now. It also follows that there is now a house in the open countryside, Rodsworthy, which fulfils no agricultural need...consequently I have concluded that although the farm may require an agricultural dwelling for the method of farming proposed, this need has been created by the fulfilment of personal needs”. (T/APP/X1118/A/92/198154/P8 dated 6 April 1992)

“Guidance indicates that the appropriate period over which such disposals should be examined is 10 to 15 years, or longer in exceptional cases. Whilst the decisions taken on the disposal on the farmhouse were clearly influenced by factors other than agricultural need, it must have been clear at the time that the chosen strategy put at risk the ability to provide a dwelling on the holding”. (APP/X1118/A/03/1114252 dated 19 November 2003).

“Furthermore, it is significant that the original farmhouse of Higher Bulworthy Farm was sold off separately, leaving your client’s land devoid of residential accommodation. Having regard to the aims of policy RAP63 and paragraph E12 of PPG7 to avoid the fragmentation of farms, I consider that this factor adds weight to my foregoing conclusion, even though I recognise that your client found himself in his present situation as a result of economic circumstances largely beyond his control”. (T/APP/X1118/A/93/226696/P5)

“I am satisfied that there has been no material change in the operation of the farm and such as exists has been satisfactorily met for many years by the original farmhouse. Although this has been sold-off it seems to me that the functional requirements of Sloley Farm remain essentially unchanged. In my opinion, this sale constitutes evidence of a lack of agricultural need and I find that there is no functional need for another dwelling to serve the holding”. (APP/C/93/X1118/628384)

### Selling Off

“...increasingly difficult to maintain the large listed Devon Longhouse...your clients propose to build a small bungalow farmhouse and continue stock farming on about 72 acres and sell off the existing farmhouse with about 8 acres of land. You consider that the domestic and social needs should override the general planning strategy for the area and many countryfolk who have farmed in remote areas do not wish to live in established centres...I understand that there would be no increase in farming activity...no case has been made that the proposed division into 2 holdings would result in 2 economically viable agricultural units and in my opinion your clients’ personal circumstances and difficulties in maintaining the existing farmhouse does not provide

a sufficiently strong agricultural need to justify the granting of permission for another dwelling in the countryside". (T/APP/5178/A/83/2317/PH2 dated July 1983)

"...where proposals for reorganisation, as yet unimplemented, are advanced in support of an additional dwelling. Although I have no reason to doubt the views of ADAS concerning the likely availability of the proposed enterprise, I can find no indication of its implementation... These considerations lead me to the conclusion that your clients proposals are not sufficiently well advanced at this stage to support the application for an additional dwelling...while I understand your client's wishes to continue to occupy the house, the fact that she chooses to do so although now primarily engaged in the running of the family engineering business cannot, in my view, negate the fact that a house exists on the farm which could otherwise be used as a farmhouse". (T/APP/J3720/A/89/135195/P2 dated 16 February 1990 Stratford-on-Avon).

### **Size of Dwellings**

The need for the size of agricultural dwellings to reflect their intended occupation by a farm worker or manager and to 'commensurate with the established functional requirement' of the holding is underlined by the following appeal decisions:

"Permission has already been granted here, in addition to the existing house adjoining, for a very substantial 4 bedroom dwelling which in terms of floorspace and scale goes well beyond any 'farm manager's dwelling' of my previous experience...I also consider that the future, potential, use of such an enlarged house is a matter of proper concern...to expand the size of the property beyond that which has already been permitted would, in my judgement, render the present occupancy condition increasingly unrealistic..." (T/APP/E3321/A/90/163768/P8).

"The evidence before me strongly suggests that if this bungalow were to be extended as proposed, it would in practice be likely to pass beyond the economic reach of any agricultural worker". (T/APP/K1128/A/90/172624/P8).