



CASE LAW AND PRACTICE GUIDE 7

AGRICULTURAL, FORESTRY AND OTHER OCCUPATIONAL DWELLINGS IN THE COUNTRYSIDE

This guide provides practical advice for use by Inspectors to help them carry out their role consistently and effectively when undertaking casework involving agricultural and other occupational dwellings in the countryside. In particular it identifies relevant Court judgements which need to be taken into account.

This guide does not provide policy advice, nor does it seek to interpret Government policy. In addressing policy issues Inspectors will be expected to have regard to the policy guidance produced by the relevant Government Department. In the event that there appears to be a discrepancy between the advice in this guide and national guidance the latter will be conclusive as the original policy source.

The Planning Inspectorate will continually update this guide to reflect important legislative changes and Court decisions and practical experience. In particular, the guide will be reviewed once the National Planning Policy Framework has been published.

Relevant National Policy Guidance

PPS7: Sustainable Development in Rural Areas

PPW: Planning Policy Wales

TAN6: Planning for Sustainable Communities

Circular 11/95 (WO 35/95): The use of conditions in planning permissions

Circular 05/2005 (WO 13/97): Planning obligations

Court judgments referred to in this guide

Epping Forest DC v SSE and Cuffaro 1994

Petter and Harris v SSETR and Chichester DC 1999

Macklin and others v SSE and Basingstoke and Deane 1995

Wood v Great Yarmouth BC 1994

Sevenoaks DC v SSE and Geer 1994

Hambleton DC v SSE and Barker 1994

Thomas v NAW and Monmouthshire CC 1999

Lliw Valley BC v SSW and Evans 1992

Dyason v SOS & Chiltern DC 1998

Cussons v SSCLG & North York Moors NPA 2010

Epping Forest DC v STLR & Emery 2005

Lomas & Lomas v SSE and Wyre BC 1994

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Introduction

1. The general approach in England to agricultural, forestry and other occupational dwellings in the countryside is set out in Annex A of Planning Policy Statement 7 (PPS7): Sustainable Development in Rural Areas. Paragraph 1 says:-

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.

In Wales and as set out in PPW and in TAN6, the categories of development types to which these circumstances apply are broader. They include traditional agricultural, forestry and other activities that obtain their primary inputs from the site, but other land based management activities and support services: all are encompassed within the term 'rural enterprises'. However, the overall decision-making approach is similar. It should also be noted that the policy approach is linked to the provision of affordable housing in rural

areas and the providing for the succession of existing farm holdings by enabling accommodation for the needs of retiring farmers in certain circumstances – see W note W3 for details.

The functional and financial test

2. PPS7 makes clear that new permanent dwellings should only be allowed where they are required to support existing agricultural activities, established for 3 years and profitable for at least one year. It has to be clearly established that there is an existing *functional need* relating to a full time worker, which cannot be met by another dwelling on the unit or accommodation in the area. Other planning requirements also have to be satisfied and security considerations will not be sufficient on their own to justify a dwelling. A functional test is needed to establish whether the dwelling is essential for the proper functioning of the enterprise and a *financial test* must establish if the enterprise is economically viable. Guidance on agricultural dwellings functional and financial tests can be found in paragraphs 3, 4, 5, 6 and 8 of Annex A of PPS7. The Courts held in *Epping Forest DC v SSE and Cuffaro 1994* that, if an essential need cannot be demonstrated under the functional test, the proposal is normally likely to fail and it will not be necessary to apply the financial test. However, if a viability case is put the Inspector should make sure that such evidence is properly considered (*Dyason v SOS & Chiltern DC 28/1/1998*).
3. Where the financial test is applied this should be done clearly and precisely as underlined by the case of *Lomas & Lomas v SSE and Wyre BC 1994* where it was found that the Inspector had applied a reasonable financial test but had misinterpreted the figures supplied. In *Cussons v SSCLG & North York Moors NPA 2010* the court ruled that the Inspector's conclusion that the needs of the farm could be met by a temporary use of the appeal building was not supported by the evidence which called for a stockman to be available "at most times" since constant supervision of the stock was required over the greater part of the year.
4. If a new dwelling is needed to support a new farming activity, whether on a new or existing farm unit, it should normally be provided by a caravan or other temporary accommodation for the first 3 years. The proposal should be supported by clear evidence that the enterprise has been planned on a sound financial basis, a firm intention (often demonstrated by significant actual investments) and ability to develop the enterprise and a proven functional need that cannot be met elsewhere. The functional need is the same as that for a permanent dwelling. Normal planning requirements should also be satisfied. However, after 3 years, permission for a permanent dwelling should not be given unless the development fully meets the functional and financial tests. These tests should be applied with common sense and in the light of the Court of Appeal judgement *Petter and Harris v SSETR and Chichester DC 1999* where it was held that the financial viability test was only relevant in cases where the uncertain future of the agricultural business might lead to a non-conforming residential use that would pass with the land. Temporary permission for a dwelling in a location should not be given where a permanent dwelling would not be allowed.

5. Evidence presented to prove viability will vary between cases. This may depend upon (for example) geography, the structure of the holding, tenure, the nature of the farming enterprise and the manner in which it is financed. There is no standard formula for what constitutes a test of viability as this will change according to circumstances and Inspectors should use their judgement when considering what is relevant. Normally information on costs of stock, feed, vet care, transport, marketing, electricity, insurance, accountants, water charges, repairs, land rent and financing charges would be taken into account, but this list is neither exhaustive nor would it be relevant in certain cases. Certain organisations have standardised tests to show the viability of operations, and agricultural data books, such as "The Farm Management Pocket Book" are available as a source of costing. Again this information can be helpful but this will depend on individual circumstances.
6. The size of agricultural dwellings should be commensurate with established farm holdings and it is the requirements of the enterprise rather than those of the owner or occupiers that are relevant in determining the appropriate size of dwelling. Development plan policies may also contain specific floor space requirements.

Subdivision of a holding

7. It cannot be assumed that permission for a new house will be given where a farm is sold without its farmhouse or divided into separate holdings. It may be argued that the sale demonstrates that the land no longer requires an agricultural dwelling [Annex A, paragraph 5, of PPS7]. The reason for selling the land separately from the farmhouse, and the resulting need for a new dwelling, must therefore be explained. However, the need for a new dwelling must be considered within the circumstances and development plan policy as they exist at the time of the appeal. If a need is established, it may still be appropriate to take account of any other accommodation on the holding under the appellant's control and whether it is available in the long term in deciding whether a further dwelling is justified.

Imposing an agricultural occupancy condition

8. Where permission for a new house would not have been given without a proven agricultural need, it will be necessary to ensure that it is kept available to meet that need. Accordingly, the permission should normally be subject to the model condition as advised in paragraph 16 of Annex A to PPS7, Circular 11/95, paragraphs 102-105. In Wales the occupancy condition included in TAN6 establishes a cascade of occupancy that defaults to the use of the dwelling as an affordable home. Note however that it has been accepted that the version set out in TAN6 may have unintended consequences and that an alternative version is now regularly imposed.
9. There may be a demonstrable need for an additional agricultural dwelling on farms where an existing farmhouse is not subject to such a condition. Allowing the new dwelling could enable the sale of the unencumbered farmhouse and lead to future pressure for another dwelling to meet the accepted need for two dwellings. In such circumstances, it may be appropriate to grant permission and impose an occupancy condition on the existing farmhouse as well as on the new one. Inspectors must be satisfied

Deleting or varying an agricultural occupancy condition

10. Occupancy conditions that have outlived their usefulness should not be retained. In deciding whether a condition still serves a useful purpose, account should be taken of the reasons for first imposing it. Usually there will be no reason to doubt that it was appropriately imposed but if the appellant puts a contrary case the matter will need to be carefully considered.
11. If the evidence supports the appellant's view that it was inappropriately imposed because there was no justification for it at the time it was imposed, that lack of justification may be a material consideration in relation to the appeal before the Inspector. It does not always follow, however, that the appeal must be allowed. It will still be necessary to consider the argument that, under present circumstances, there is an agricultural justification for its retention, notwithstanding what may have been the case when it was first imposed (*Sevenoaks DC v SSE and Geer 1994*). In reaching a judgement, the fact that planning permission would probably be given today without an occupancy condition is a material consideration (*Hambleton DC v SSE and Barker 1994*).
12. Assessing whether there is a continuing agricultural need for the condition will entail a consideration of the present and long-term need for a dwelling, both on the particular farm, and in the wider locality. The same approach is used in Wales in respect of rural enterprises. In attempting to demonstrate that a condition no longer serves a useful purpose, it will normally be for the appellant to show that the dwelling has been offered for sale for a reasonable period at a price which reflects the existence of the condition. The letting of a dwelling can be material in assessing agricultural need (*Thomas v. NAW and Monmouthshire CC 1999*). Para 17 of Annex A of PPS7 expects that LPAs should have undertaken an assessment of the demand for farm dwellings in their areas. In addition, details of those employed in agriculture, applications for new agricultural dwellings, the number of agricultural workers on the council's housing waiting list, and any evidence of surplus agricultural workers' dwellings in the area, may all also be relevant considerations. In Wales, evidence regarding the availability of affordable housing in the locality may also be relevant in terms of the potential to broaden the terms of the occupancy condition as set out in TAN6. No 'burden of proof' rests on the appellant or the LPA and each case should be decided on a realistic assessment of the long-term need to retain the dwelling for someone solely, mainly or last working in agriculture in the area as a whole (*Lliw Valley BC v SSW and Evans 1992*).

13. In many cases the robustness of the marketing undertaken will be a critical factor. As previously mentioned the sale price should be realistic in reflecting that the condition will reduce market value and any terms of sale should not deter prospective purchasers. Other factors may include the length of time the property has been offered, the manner of advertising, the thoroughness of the coverage and whether all groups of potential occupiers have been appropriately targeted. There may also be particular requirements in these respects within the development plan. Evidence may also be given about whether more intensive uses of any land associated with the dwelling are potentially viable and could give rise to a need for an agricultural workers' dwelling. In *Epping Forest DC V STLR & Emery 2005* it was held that the price that could reasonably be expected to be paid by someone satisfying the occupancy condition is an important factor but that it should not be considered in isolation. The market price of the property without such a condition and the alternative of a house without such a condition are also relevant. The Court supported the Inspector's finding in the light of the marketing exercise that there was no demand for the property at any price that could reasonably be expected to be paid by someone meeting the condition.
14. Where a farmhouse with an occupancy condition has become redundant as a result of a farm amalgamation, it may be too large for an agricultural worker to maintain, or may have no land attached which forms a viable unit in its own right. In such a case it may be doubtful that continued imposition of an occupancy condition can be justified, though care must be taken to assess, to the extent that this is reasonably possible, whether a need for a farmhouse in the locality is likely to arise in the near future. In Wales, however, the cascading mechanism relating to its occupancy may well be engaged.
15. Where there is a continuing agricultural need for the dwelling but the occupancy condition was imposed many years ago and is unduly restrictive it should be modified to the standard form. Any such intention must be raised with the parties before being imposed.

Obligations

16. In certain circumstances, LPAs may seek to use planning obligations to tie a farmhouse to adjacent farm buildings or to the agricultural land of the unit, to prevent them being sold separately. However, any obligation would need to comply with the tests in Regulation 122 of the Community Infrastructure Levy Regulations and Annex B paragraph B5 of ODPM Circular 05/2005: Planning Obligations and/or the advice in WO circular 13/97 in respect of cases in Wales. It may be that such an Obligation is not necessary to make the development acceptable in planning terms and may also raise human rights implications regarding the right to keep and dispose of property. [Further advice on obligations can be found in IIS PG7].

Other occupational dwellings

17. PPS7 paragraph 15 advises that the same stringent level of assessment to applications for agricultural and forestry workers' dwellings should be applied to applications for other occupational dwellings linked to other rural based businesses (e.g. the breeding and keeping of horses). The same criteria and principles in paragraphs 3-13 of PPS7 Annex A should therefore be applied in

Specific issues

Green Belts

18. Proposed new dwellings in Green Belts are considered inappropriate forms of development, regardless of whether they have a sound agricultural justification (the wording of relevant development plan policies should also be carefully checked as they may treat workers' dwellings as exceptions which are considered to be appropriate development in the Green Belt). However, meeting the functional and financial tests may be other considerations that clearly outweigh the harm by reason of inappropriateness and any other harm. Paragraph 15 of IIS CL1 (Green Belts) and Wales W3 note gives further advice.

Failure of automatic systems

19. This is a valid issue which is referred to in PPS7 Annex paragraph 4ii when considering whether there is a functional need. Appellants may argue that back-up systems and remote power failure alarms could be installed but that the cost of such equipment would be prohibitively high. Such assertions should be supported by information about the cost of the equipment in comparison to the scale of the investment already made in the enterprise and the cost of constructing a dwelling as an alternative.

20. Where the potential failure of automatic systems is an issue, the time taken to reach the holding from other available accommodation in the area (in a worst case winter scenario) should be compared with the time the product can withstand loss or harm before the system failure is rectified.

Alpaca farming

21. Inspectors are often presented with arguments that alpacas need greater care over more traditional livestock. Furthermore, it is emphasised that alpacas can give birth throughout the year (they are induced ovulators), show little sign of imminent birth or oncoming ill health and can often have complicated births. In addition, the need to hand rear young with regular feeds in the first few weeks is not uncommon. Therefore, appellants may argue that someone is needed on hand at most times to make regular checks.

22. However, birthing in alpacas is very similar to calving in cattle, foaling in horses or lambing in sheep. Alpacas tend to give birth early in the day and almost always before mid-afternoon. Labour is usually swift lasting about 5-20 minutes.¹ Consequently, regular out of hours checks may often be unnecessary. Arguments that alpacas have special care needs should therefore be treated with caution.

23. Arguments are also regularly put forward about the high value of alpacas compared with more traditional livestock. Whilst they do have a high value,

¹ Llamas and alpaca – A guide to management. Gina Bromage. The Crowood Press Ltd.

general issues concerning security matters are discussed above and are equally applicable to alpaca farms.