

A further representation from the planning consultant on behalf of a local resident has been received and sent to all members of the committee. It states in summary that *'there is no clearly established functional need for the enterprise to be in the countryside, there is no requirement for a three bedroom dwelling (even on a temporary basis), and the viability of the enterprise is not proven, particularly in the absence of access to the necessary "no-kill" technology.*

Felt it appropriate to alert you to the fundamental concerns about viability, the need for a countryside location, and the recent approach taken by the Inspectorate in near-identical circumstances.

If your committee takes a contrary view and moves to approve the permission, we believe that the uncertain viability of the proposed enterprise would justify the use of a restoration bond to support proposed condition 13. Such bonds are commonly used in developments where large earthworks are involved and where the impact of a partially complete or abandoned enterprise would be harmful (e.g. a golf course). They can be sought from the applicant and secured under s106'.

Officer Response:

Viability

Financial considerations may be regarded as material when considering whether or not to grant planning permission when the information "fairly and reasonably relate to the development permitted". However, these issues generally arise in connection with cases concerning "enabling development" - financial viability is not generally a material consideration to be taken into account.

The objector's representative asserts that the special justification for the dwelling in the countryside requires a critical examination of the viability of the enterprise and the South Derbyshire Appeal decision is being relied upon to support this justification – it is however, one appeal decision - and although capable of being material, it is not a precedent that must be followed and it is wholly up to the committee to consider what weight, if any they attach to it.

The only reference to agricultural workers' dwellings in the NPPF is in paragraph 55, which simply states that local planning authorities should avoid new isolated homes in the countryside unless there are special circumstances such as the essential need for a rural worker to live permanently at or near their place of work in the countryside. No guidance is given in the NPPF as to the use of agricultural occupancy conditions or as to their removal. However, "the essential need for a rural worker to live permanently at or near their place of work in the countryside" can only be judged on an objective basis. Unlike PPS7, the NPPF offers no guidance as to how "the essential need for a rural worker to live permanently at or near their place of work" is to be assessed in practice, whereas Annex A of PPS7 was notably prescriptive in setting out the criteria that would have to be met in order to prove that need.

CT1 is referred to at page 23 of the report and states:-

CT1 Development will be contained within the Planning Boundaries as shown on the Proposals Map. Planning permission will not be granted for development outside the Planning Boundaries, other than for that specifically referred to in other chapters of the Plan or listed below:

- (a) institutional sites (Policy CT5)
- (b) new residential development in the Countryside (Policy RES6 & RES7)
- (c) certain tourism proposals (Policies E12,E14, E16,E17)
- (d) minor development proposals which are essential to meet the needs of local communities and community services
- (e) affordable homes exceptions sites (Policy RES10)
- (f) re-use and adaptation of rural buildings (Policy E9)
- (g) certain forms of sports, recreational and leisure development (Policy RE4)
- (h) any other development in the countryside for which a specific policy reference is made else-where in the Plan
- (i) proposals which feature in an adopted minerals or waste disposal local plan
- (j) provision of essential/service facilities to meet community or environmental needs for which a rural location is required.
- (k) development which can be shown to be reasonably necessary for the purposes of agriculture or forestry.

The retention of the open character of the countryside is of heightened importance where it separates settlements and prevents their coalescence. Development referred to above may not be acceptable where its scale would significantly erode the gap between settlements and detract from their separate identities.

Neither Paragraph 55 nor CT1 refer to financial viability as an essential part of the test – it is a matter of fact and degree for the committee to decide whether the proposed temporary dwelling complies with Policy CT1 and Paragraph 55 of the NPPF.

The test is essential need and although unlike the test formerly proposed by Annex A to PPS7 (now withdrawn) requiring existing viability being proved by at least three years' accounts, Paragraph 55, of the guidance no longer prescribes a test and as such the factors that need to be taken into account in considering essential need must therefore be made on a case by case basis.

Your officer's advice is that the issues of viability are addressed in this application by the imposition of a 3 year temporary permission which will give the LPA an opportunity to assess viability once actual quantifiable evidence is available. - LPA's should not be unreasonably pessimistic about the future marketability of a particular product but should judge on the merits of the proposal as presented in the knowledge that both the dwelling is subject to a 3 year temporary permission and the site is also subject to a restoration condition in the even the fish farming activity ceases for a period exceeding 12 months.

The Need for a Countryside Location

This is addressed in the report. Members are advised to consider application before them – 'ideally suited' is an officer opinion – no mention is made of alternative sites being unsuitable.

The Need for the Dwelling

This is dealt with in the report.

Restoration Bond

Officers consider the request for a S.106 to secure a restoration bond to be a disproportionate requirement to deal with the risk involved here.

All S.106 requirements are required by law be

- (a) necessary to make the development acceptable in planning terms;
- (b) directly related to the development; and
- (c) fairly and reasonably related in scale and kind to the development.

This is not a common requirement for small scale development - In a case concerning the importation of waste material for a golf course; an inspector judged that a requirement for a bond to secure the restoration of the site was not necessary as the terms of an agreement would provide a sufficient basis for implementation. The importation of a large amount of waste is the sort of circumstances which could justify an s.106, albeit not necessarily a financial bond, to require the re-instatement of land as the cost would be significant.

It is your officer's view that the restoration can appropriately be dealt with by way of a planning condition which, if necessary, could be enforced by way of and Breach of Condition Notice, and subsequent prosecution, or by way of an enforcement notice and direct action as appropriate.

Additional conditions proposed:

The method of caviar collection employed on the site shall be the non-sacrificial method of aquaculture only.

Reason - To ensure the sustainable method of production is employed in order to ensure that vehicle movements associated with the business are minimised and do not impact on the safety of persons and vehicles using the surrounding highway having regard to Policy ST3 of the Lewes District Local Plan and to comply with National Policy Guidance contained in the National Planning Policy Framework 2012.

No development hereby approved shall take place on site until the developer has submitted details to show how materials/soil/runoff from the site during the construction period and post construction until all the land has stabilised, will be prevented from entering the stream at the western boundary. Those details shall be submitted to the local planning authority and approved in writing and carried out in accordance with that approval.

Reason - To ensure that the development does not detrimentally impact on the gravels and stream bed which in turn would impact on the spawning grounds of the trout and other fauna and flora having regard to Policy ST3 of the Lewes District Local Plan and to comply with National Policy Guidance contained in the National Planning Policy Framework 2012

At callover Members asked a question concerning legislation and controls relating to fish farms. The Defra website provides the following information:

The effect of a fish farm will be monitored and controlled in a similar way to land animal farms. A complex regulatory system has evolved in order to minimise negative effects of the aquaculture industry

The Fish Health Inspectorate as part of the Centre for Environment Fisheries & Aquaculture Science (Cefas)) is an Executive Agency of the Department for Environment, Food and Rural Affairs (Defra) whose main objectives are to prevent the introduction and spread of serious fish and shellfish diseases.

- The Aquatic Animal Health (England & Wales) Regulations 2009*
- The Trade in Animals and Related Products Regulations 2011*
- The Alien and Locally Absent Species in Aquaculture (England & Wales) Regulations 2011*
- The Import of Live Fish Act 1980*
- Veterinary Medicines Regulations 2009*
- The Animal and Animal Products (Examination for Residues and Maximum Residue Limits) Regulations 1997*
- Section 114 and Part V1 (Genetically Modified Organisms) of the Environmental Protection Act 1990*
- Regulators' Code 2013*
- Regulatory Enforcement and Sanctions Act 2008*
- Defra Enforcement Policy Statement*

A request has been made to the Secretary of State for Communities and Local Government for the application to be determined by him, rather than by Lewes District Council. The case officer at the Department for Communities and Local Government ("DCLG") has confirmed (on Tuesday 22/11/16) that a decision to call in this application has not been made. Due to the lateness of the request to have the application called in, the DCLG have asked that officers do not to issue the decision notice until DCLG has been informed of the committee's resolution and we have given this re-assurance. This will give DCLG time to assess the request against the relevant call-in policy which requires the power to call in to be used very selectively.

Additional comments

For completeness, in light of national and local policy about building in the countryside **new permanent dwellings** are only likely to be allowed to support existing business, and it would be necessary to demonstrate:

- there is a clearly established existing functional need;
- the need relates to a full-time worker, or one who is primarily employed in the business to which the application relates and does not relate to a part-time requirement;
- the unit and 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;
- 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
- other planning requirements, e.g. in relation to access, or impact on the countryside, are satisfied.

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:

- in case animals or agricultural processes require essential care at short notice;
- 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.
- for security