

**ESSENTIAL DWELLINGS IN THE
OPEN COUNTRYSIDE
Final Report**

**RESEARCH PROJECT
CONTRACT NO: 250/2002**

**Prepared for
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by
Land Use Consultants
in association with
Kernon Countryside Consultants
and
The Institute of Rural Sciences,
University of Wales, Aberystwyth**

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14 Great George Street
Bristol BS1 5RH
Tel: 01179 291 997
Fax: 01179 291 998
luc@Bristol.landuse.co.uk

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I. BRIEF AND METHODOLOGY

THE BRIEF

Scope

- 1.1. This research has been undertaken to advise on the nature of future planning policy in Wales for essential dwellings in the open countryside, currently covered in *Planning Policy Wales March 2002 (9.3.6 –10)* and Technical Advice Note (TAN) (Wales) 6 *Agricultural and Rural Development 2000*.
- 1.2. In the context of this research:
 - *open countryside* is that away from established settlements recognised in UDPs;
 - *essential dwellings* are those where it is deemed essential that they have a rural location because of the specific function that they perform;
 - *urban fringe areas* are taken to be those areas on the fringes of Cardiff, Swansea and Newport and the A55 corridor in the North East of Wales;
 - *accessible rural areas* are those within easy commuting distance of main population centres; and
 - *remote rural areas* make up the majority of Wales, focused on central and western Wales.
- 1.3. It has been a long held aim of national planning policy to minimise development in the open countryside. One of the few ‘exceptions’ to this policy has been to allow dwellings which are essential for the proper functioning of agriculture and forestry.
- 1.4. In this research, the focus has clearly been on essential dwellings for agriculture and forestry, and the operation of agricultural occupancy conditions. But, reflecting the increasing policy emphasis on farm diversification, it has also taken account of other dwellings provided in support of activities requiring a rural location, such as equestrian activities, fisheries, recreational activities, and farm based food processing.
- 1.5. However, this research has **not** looked at low impact development (which has been considered under separate research). Nor has it looked at ‘non-essential’ dwellings in the open countryside (ie those that do not essentially require a rural location such as tourism accommodation which does not fulfil functional need) or residential applications unrelated to a rural business. Nevertheless, it is recognised that the boundary between these different types of development is blurred and the research has been alert to this.

Objectives

- 1.6. As set out in the brief (**see Annex**), the objectives of this research have been to:

- Review the Assembly’s current guidance on agricultural and forestry dwellings and agricultural occupancy conditions, with particular reference to the functional and financial tests.
 - Advise on the appropriateness of the guidance in the light of changes to the rural economy and current rural policy.
 - Assess in detail the adequacy of the operation of current controls including monitoring and enforcement.
 - Investigate alternative methodologies for assessing the need for essential new dwellings in the open countryside.
- 1.7. In undertaking this research it has been important to see essential dwellings within the broader context of : the future of agriculture and forestry; the development of sustainable rural communities; support for the Welsh language; and the development of new rural employment and business opportunities to secure a thriving and diverse rural economy, where agriculture and related activities are complemented by sustainable tourism and other forms of employment in a working countryside.
- 1.8. More specifically this research has needed to take account of:
- the changing economic fortunes of farming in Wales;
 - the potential implications of the current reforms of the EU Common Agricultural Policy (CAP) on farm structures and income;
 - the strong emphasis in national policy (*Farming for the Future*) on retaining traditional family farms in Wales;
 - the growing policy concern about the loss of young people from rural Wales (especially from Welsh speaking heartlands) including a lack of young people entering farming;
 - the lack of affordable housing in rural areas available for local people;
 - the unprecedented rise in house prices in rural Wales over the last two years, exacerbating the lack of affordable housing;
 - the continuing and growing pressure for a ‘house in the country’ fuelled by the pressures of commuting and retirement and, in some areas, second homes.

METHODOLOGY

- 1.9. The methodology for this research has involved a number of steps.

Context setting

- 1.10. A literature review has explored the context of essential dwellings in the open countryside, reflecting the points set out in paras. 1.7 –1.8 above. This has been supported by a brief review of the evolution of policy for essential dwellings.

- 1.11. In parallel, a postal questionnaire was circulated to over 100 estate / land agents in Wales with the aim of gaining first-hand data on the current state of the rural housing market as it relates to essential dwellings. 34 returns were received of which 26 included data that could be analysed.

Statistical data gathering

- 1.12. As the total number of planning applications for essential dwellings per planning authority is small, attempts have been made to build up a national picture of planning applications for new essential dwellings and those for the removal of occupancy conditions during the three year period 1999 – 2002 inclusive. In consequence a short email questionnaire was circulated to all local planning authorities (lpas) in Wales.
- 1.13. Following successive redistribution of the questionnaire over a four month period a total of nine returns were received by the end of January 2004 from:
- Blaenau Gwent Borough Council (urban fringe)
 - Brecon Beacons National Park Authority (accessible rural)
 - Bridgend County Borough Council (urban fringe)
 - Denbighshire County Council (urban fringe / accessible rural)
 - Gwynedd County Council (accessible rural / remote rural)
 - Pembrokeshire Coast National Park Authority (remote rural)
 - Powys County Council (accessible / remote rural)
 - Swansea County Council (urban fringe)
 - Wrexham County Borough Council (urban fringe / accessible rural)
- 1.14. As these lpas represent a reasonable coverage of urban fringe, accessible rural and remote rural areas in Wales, they have formed the primary sample for all further research undertaken through this study.
- 1.15. This was followed by a telephone discussion with the majority of lpas that had not responded, to ascertain the typical number of planning applications received for new essential dwellings and the lifting of occupancy conditions. This was backed by discussions at a meeting of the Planning Officers' Society in March 2004 to explore the specific planning issues raised by essential dwellings in the open countryside.
- 1.16. An important point raised at the Planning Officers' Society meeting was the increasing number of applications for Certificates of Lawfulness of an Existing Use from people who have been living in breach of an agricultural occupancy condition in excess of 10 years. This was therefore picked up in the remainder of the research.

National consultations

- 1.17. Because of the diverse range of issues bearing on future planning policy for essential dwellings in the open countryside, the views of a wide range of national consultees have been sought. Those contacted in writing and those that responded are indicated in **Table I.1** below.

Table 1.1: National consultees contacted during the research

Consultee	Response received
<i>Welsh Assembly Government Divisions</i>	
1. Environment Division	
2. Economic Policy Division	
3. Food and Farming Development Division	
4. Rural Policy Division	
5. Housing Directorate	
<i>Other Organisations</i>	
6. Campaign for the Protection of Rural Wales (CPRW)	
7. CBI Wales	
8. Coed Cymru	
9. Country Land and Business Association (CLA)	
10. Council of Mortgage Lenders	
11. Countryside Council for Wales (CCW)	
12. Farming Connect (Welsh Development Agency)	
13. Farmers' Union of Wales	
14. Federation of Small Businesses	
15. Forestry Commission	
16. House Builders' Federation (HBF)	
17. National Farmers' Union Cymru	
18. National Trust	
19. Planning Inspectorate	
20. One Voice Wales	
21. Royal Institution of Chartered Surveyors (RICS) Wales	
22. Royal Town Planning Institute (Wales)	
23. Trades Union Council (TUC)	
24. Wales Council for Voluntary Action	
25. Wales Tourist Board	
26. Welsh Development Agency	
27. Welsh Federation of Housing Associations	
28. Welsh Local Government Association (WLGA)	

1.18. The six specific questions to which responses were sought were:

1. Where do you believe the pressure for essential dwellings in the open countryside comes from eg:
 - a) genuine agricultural need?
 - b) other enterprises requiring a location in the open countryside?
 - c) a desire for a house in the country amongst those outside farming?
2. Do you believe that this current exception in planning policy is being abused in any way and, if so, how?
3. What do you believe will be the effects of current CAP reforms on the future of agriculture and how are these likely to affect demand for essential dwellings in the open countryside in support of agriculture, forestry and other rural activities?

4. Is the demand for new dwellings in the open countryside linked to the current lack of housing at affordable prices in the rural areas of Wales?
5. Do you believe that in the future the policy for essential dwellings in the open countryside should take account of the Assembly Government's emphasis on retaining family farming in Wales?
6. In the light of your answers to the above questions, do you think that there continues to be a need to allow new dwellings in the open countryside in support of :
 - a) agriculture and forestry
 - b) other rural activities (please specify)?

Review of lpa policy and practice

1.19. As part of this research it has been important to understand how current planning applications for essential dwellings and the lifting of occupancy conditions are dealt with by lpas, and the policies that guide these decisions and their conformity with national policy guidance. It has also been important to understand the types of planning application relating to essential dwellings in the open countryside currently being made and the nature of supporting information that accompanies these applications. The research, therefore, has involved a series of investigations in the nine sample lpas (para 1.13). These were:

- Review of the relevant planning policies in the local plans / unitary development plans (UDPs) of the selected lpas.
- Review of a total of 5-6 case files per lpa (1999- 2003) relating to applications for a new essential dwelling, the lifting of occupancy conditions, and applications for a Certificate of Lawfulness relating to dwellings with an agricultural occupancy condition. The review of each case file was conducted at the offices of the lpa and involved the collection of data according to a pre-prepared pro-forma linked to a database. The total number of case files reviewed across all the lpas was:
 - 28 planning applications for new essential dwellings
 - 12 planning applications for the lifting of agricultural occupancy conditions
 - 9 applications for a Certificate of Lawfulness.
- Discussions with local authority officers on the policy and practice adopted in the consideration of applications relating to essential dwellings in the open countryside. This involved structured discussions with officers concerned with forward planning, development control, enforcement, and housing provision.

Case studies

1.20. Building on the review of lpa policy and practice, it was felt vital that the research investigated in some detail the nature of current planning applications being made for essential dwellings in the open countryside – the motivations for the applications and

the social and economic considerations involved, and to explore in detail the workings of the extant policy guidance. As a consequence:

- A desk based analysis has been undertaken of 40 of the case files collected from the sample Ipas, with the aim of examining each against the extant policy tests set out in TAN (W) 6 for essential dwellings in the open countryside (Chapter 3) to assess their level of compliance, and also to identify the factors that might be driving the applications.
- Following on from the above, a total of 20 applications were selected for more detailed examination as specific case studies:
 - 14 case studies relating to applications for new essential dwellings
 - 3 case studies relating to applications for the lifting of agricultural occupancy conditions
 - 3 case studies relating to applications for certificates of lawfulness

These case studies involved face to face interviews with the applicant to understand:

- the claimed agricultural need ie was the dwelling essential for the enterprise or were other factors driving it; and
- the social and economic issues involved, and the effects that a refusal has or might have had on the farm and its future, both as a business and for its occupants.

1.21. This more detailed analysis has been essential to informing the conclusions and recommendations reached through this research, ensuring that the evidence is clearly grounded in reality rather than opinion.

1.22. The following Chapters set out the findings of this research with Chapter 2 establishing the broader context.

2. NATIONAL CONTEXT AND POLICY

- 2.1. This Chapter outlines the national context within which planning policies for essential dwellings in the open countryside need to be considered. First it looks at trends in Welsh agriculture and rural housing affordability and then considers the relevant policy context for the future of rural areas.

TRENDS IN AGRICULTURE

- 2.2. 1.6 million hectares are classified as under agricultural use in Wales.

Farm types

- 2.3. **Milk, beef cattle and sheep** are the main outputs of farming in Wales. Dependence on livestock arises from climatic and other limiting conditions on agriculture in Wales: 77% of farmland is designated as Less Favoured Area (LFA) – 52% seriously disadvantaged and 26% disadvantaged. This emphasis on livestock rearing is borne out by land use statistics, with roughly 8% of the agricultural land in Wales under arable, compared to 92% under pasture and rough grazing. These figures have remained little changed over the last 10 years. The emphasis on livestock rearing is further reinforced by an analysis of farm types (**Table 2.1**) with only 1% of farm holdings in Wales classified as arable in 2002, compared to 35% classified as cattle and sheep LFA.
- 2.4. Also of note is the steady increase in holdings in the ‘other’ category between 1999 and 2001 from 5,901 to 8,244. This ‘other’ category has largely arisen as a result of the fragmentation of established farm holdings to create small ‘hobby’ plots¹.

Table 2.1: Number of main holdings by Farm Type

	1999	2000	2001	2002
cereals	291	255	253	282
general cropping	177	163	162	122
horticulture	329	373	370	524
pigs and poultry	430	407	401	631
dairy	3644	3381	3364	3178
cattle and sheep (LFA)	13014	12219	12143	12802
cattle and sheep (Lowland)	3557	3230	3218	3665
mixed (cropping and livestock)	675	606	625	677
other type	5901	7776	8244	14592
All types	28,018	28,410	28,780	36,746

Source: Wales in figures – NAW

- 2.5. The specific trends in the livestock sectors are illustrated in **Table 2.2**, with the national dairy herd remaining fairly constant in size over the last 10 years but with a 30% decrease in the number of dairy holdings. By comparison the number of beef cows has fallen back from a high in 2000 while the number of holdings with beef cattle has decreased by 8% over the last 10 years. This compares to the sheep sector where

¹ The very significant increase of ‘other’ units in the statistics for 2002 came about indirectly as a result of the Foot and Mouth disease epidemic of 2001 where a number of holdings were alerted that, that if they kept any livestock, there was a legal requirement for them to be registered for animal health purposes. In practice many of these holdings only have a small number of horses and so, for the purposes of the census, are classified as ‘specialist horses’ although many of them do not regard themselves as agricultural holdings.

sheep numbers fell by over 1 million between 2000 and 2002 and the number of holdings with sheep also decreased by 8% over the last 10 years.

Table 2.2: Trends in the livestock sectors in Wales over the last 10 years

	1992	2000	2001	2002
Dairy sector				
Dairy cows (thousands)	269.5	268.6	270	267.7
No of holdings with dairy cows	5712	4307	4100	4004
Average size of herd	47	62	66	67
Beef sector				
Beef cows (thousands)	164.7	223.3	206.2	195.8
No of holdings with beef cows	9856	9326	8714	9020
Average size of herd	17	24	24	22
Sheep sector				
Total sheep (thousands)	11055	11148	9897.3	10050
No of holdings	17543	15088	14150	16118
Average size of flock	630	739	700	624

Source: Farm business survey

- 2.6. The **horticulture** sector in Wales is small with only 1,600 hectares (a reduction of 16% over the last 10 years) across the whole of Wales (estimated to be 900 holdings)². This represents 1% of the farmed area in Wales³, generating £350 million in 2001. Within this sector the most important crops are fruit and vegetable production, landscaping, novel crops (herbs) and floriculture including foliage supply, with the landscape industries being a significant growth area.
- 2.7. By comparison, the **organic sector** has seen strong growth over the last 10 years. In total some 4.1% of agricultural land is under organic management in Wales, with a total of 622 organic farmers⁴ in 2004. 90% of this organic land is associated with beef and sheep production with data from organic certification bodies indicating that in April 2003, there were around 3,700 organic cows, 65,000 organic lambs, and 50,000 organic ewes. In addition, arable makes up 4% of the organic land and fruit and vegetables a further 1.2%⁵. The main concentrations of organic production are in Powys (22%), Pembrokeshire (17%), Ceredigion (12%), Carmarthenshire (12%) and Gwynedd (12%).
- 2.8. Organic milk production has experienced a significant increase in capacity since 1998, rising from just 30 organic dairy farms in Wales in 1998/99 to a peak of 147 farms in 2000/01, with the volume of organic milk marketed in Wales growing from 4 million litres in 1998/99 to 36 million litres in 2002/03. However, the rapid rate of organic conversion in 1999/2000 has levelled off due to falling prices and market saturation, with the average cost of organic milk production reported as 22.9p per litre, higher than the price paid to many farmers - indeed some farmers are now withdrawing from organic production.

² Taken from the June 2002 census data

³ This figures combines all fruit, vegetables grown in the open, hardy nursery stock and glasshouses

⁴ Organic Centre Wales, 2004

⁵ Organic Centre Wales, 2004

Farm incomes

- 2.9. Reflecting UK trends, agriculture suffered a continually worsening situation in Wales from the mid 1990s to 2002, with average Net Farm Incomes falling to just £1,900 for the year 2001/02 for sheep farms and roughly £5,500 for both upland and lowland cattle and sheep farms. Such were the financial hardships that many farms or parts of farms were sold, fuelling the rise in the number of 'other' farms, noted in para 2. 4.
- 2.10. Yet since this time there has been a very significant recovery in farming fortunes across the UK, with total UK income from farming rising by 32% in 2003 to £3.2 billion compared with 2.4 billion in 2002. In Wales, the incomes of livestock farmers have reached a seven year high, reflecting a very significantly improved price for lamb, coupled with a strong demand for beef during 2003. As a consequence, Net Farm Income on the average farm in Wales is forecast to increase to £16,400 for the year 2003/04, a rise of £2,500 from 2002/03 and £6,800 from 2001/02⁶. Indeed farms in Less Favoured Areas are expected to see even larger increases with an anticipated Net Farm Income for the year 2003/04 of £16,700 which is a rise of £13,600 from the 2001/02 level (**Table 2.3**). This reflects a significant rise in outputs while costs have reduced.
- 2.11. Agricultural borrowings though, hit their highest December level in over 15 years in 2003, with farming debt standing at almost £8 billion, representing a 2.7% rise on the previous year⁷.

Table 2.3: Net farm income by farm type

Farm sector	Net Farm Income		
	2001/02	2002/03	2003/04(f)
Dairy and livestock	£9,600	£14,100	£16,400
LFA cattle / sheep	£3,100	£13,100	£16,700
Dairy	£26,000	£19,300	£19,600

(f) forecast

Source: Farm Business Survey

- 2.12. The one sector in Wales that is not enjoying this upturn in income is the dairy industry where average Net Farm Income is expected to rise by only £300 in 2003/04, which is £6,400 lower than in 2001/02. According to the farm business survey this reflects that the value of outputs rose by only 1.5% between 2001/02 and 2002/03, while expenditure on inputs rose by nearly 11%. Over the same period milk prices fell by 10% - 15%.
- 2.13. It is interesting that such has been the pace of change in farm incomes in Wales that many commentators are still reflecting on the declining state of agriculture.

Farm labour

- 2.14. Nevertheless, continuing a long term trend, the numbers employed in agriculture in Wales continues to fall, with a reduction of 8,600 in the agricultural labour force over the 10 years 1992-2002. However, as indicated in **Table 2.4**, this fall has almost

⁶ Gwlad issue 26, based on the farm business survey figures

⁷ Farmers Weekly February 2004 (based on Bank of England Figures)

entirely come from a fall in agricultural workers rather than a fall in full and part-time owner occupiers and tenants.

Table 2.4: Numbers employed in agriculture in Wales

Labour on Holdings (thousands)	1992	2000	2001	2002
Farmers, partners and directors:				
Full time	22.5	22.6	22.8	22.5
Part time	12.7	20.8	22.1	22.6
Wives, husbands, partners of farmers	11.8			
Family and hired workers:				
Full time	5.4	3.4	3.3	3.0
Part time	4.0	3.4	2.8	2.7
Seasonal or casual workers	8.3	5.2	4.9	5.2
Salaried managers	0.3	0.4	0.4	0.4
Total labour on holdings	64.9	55.7	56.4	56.3

Source: Wales in figures – NAW

- 2.15. A significant factor is the age of the farming population. As in 1995, the average age of farmers in Wales in 2000 was 54, with 65.6% of the farming population over 50 (a similar figure to 1995). The age structure of farming is of concern. As identified by the Farmers' Union of Wales, the agricultural industry in Wales is dependent on the retention of young people to provide the next generation of farmers. They note that many young people who have been brought up on farms have had to follow another career or seek employment elsewhere because of low farm incomes. But they still need to remain close to the farm holding as many continue to contribute part-time labour on the farm.

The implications of current CAP reforms

- 2.16. The implication of the current fundamental reforms of the Common Agricultural Policy (CAP) will be profound but as yet remain largely unknown. Under the current reforms, production support payments under Pillar One of the CAP will be replaced by a single farm payment, unrelated to production levels. In Wales this single farm payment will be based on the historical patterns of payment but the total amount that will be made available to farmers in Wales has yet to be announced. Thus for farmers the current overriding concern is that they do not know what they are going to get and when, limiting any attempt at forward planning.
- 2.17. As a consequence, amongst commentators there remains considerable uncertainty as to the potential implications of these changes on farming patterns and farm income. A recent paper at the Agricultural Economics Society conference suggested the possible advent of 'sofa farmers' who will reduce stock and will turn their back on conventional farming. Amongst farmers too there is a general view that there will be a certain amount of destocking, especially in the beef herd, with these farmers preferring to buy in store cattle. Nevertheless, the current uncertainty means that there is unlikely to be any sudden change in stock numbers or farming patterns.
- 2.18. **Views of consultees:** Amongst those consulted through this research, there was a range of views on the likely implication of CAP reform on the future of agriculture. It was the view of consultees that the current CAP reforms could lead to:

- greater flexibility and freedom for farmers to make decisions based on market forces (FUW) leading to a much greater diversity of farm types (Food and Farming Development Division) with any individual farmer drawing income from a wide range of sources – agricultural, on farm diversification and off farm employment;
- a growth in larger agricultural units and therefore fewer full-time farmers (CLA);
- early retirement by some farmers (CLA) combined with encouragement of new entrants into farming (FUW);
- a shift in emphasis from quantity of production to quality of production - developing the farmers' stewardship role in the management of the countryside (WTB);
- development of a new breed of farmer who owns stock but takes short-term lets on grazing (Coed Cymru);
- greater emphasis on adding value with further diversification of farmers into a range of enterprises including, where demand exists, tourism, potentially leading to more farm-based jobs in diversified activities (WTB) and an increasing demand for rural labour (FUW);
- a continuation of the trend for farmers to seek employment outside farming, with many farmers' wives having paid work (National Trust);
- as a product of the above, farmer incomes becoming multi-faceted responding to market forces – potentially increasing the level of risk and uncertainty (Food and Farming Development Division);
- continuing pressure for farmers to sell off assets such as the selling of the farmhouse (National Trust).

TRENDS IN FORESTRY

- 2.19. Welsh woodlands account for 13.7% of the Welsh land area, of which some 40% (110,000 hectares) is owned by the National Assembly (Forestry Commission woodlands) and 60% is in private ownership (176,000 hectares). Of the total woodland area, 56% is under conifer, primarily Sitka Spruce, with much of this concentrated in large upland plantations, and 44% is under broadleaves dominated by oak and ash and found predominantly in lowland areas and valley sides, with many as smaller farm woodlands.
- 2.20. In the last 15 years there has been a strong policy shift, as reflected in the Wales Woodland Strategy – *Woodlands for Wales* (2002), away from developing a strategic timber reserve towards promoting multi-benefit forestry. Reflecting this, the Woodland Grant Scheme in Wales has had an emphasis on supporting broadleaves, although conifers have still dominated in terms of overall areas of restocking and new planting (**Table 2.5**) – with the majority of coniferous planting relating to the restocking of existing plantations.

Table 2.5: Total areas of restocking and replanting and areas under the Woodland Grant Scheme

Woodland types	Total area of new planting and restocking in Wales		Total area under the Woodland Grant Scheme in Wales	
	1996/97	2002/03	1996/97	2002/03
Conifer	2,900 ha	1,600 ha	900 ha	500 ha.
Broadleaves	800 ha	600 ha	1,300 ha (1)	800 ha.

(1) These areas exceed the areas of new planting and restocking with broadleaves, as the Woodland Grant Scheme also provides for the management of existing woodlands

Source: www.forestry.gov.uk

- 2.21. The total return from forestry in Wales in the three year period 1999 – 2002 has been estimated at –3.2%. In particular, there has been increasing competition from the Baltic states and Eastern Europe which has seriously affected the profitability of conifer production, evident in the 24% fall in the average price per cubic metre of overbark standing between 2002 and 2003. However, ventures into multi-purpose forestry, such as mountain biking centres, have potential to increase the economic value of forestry as does adding value to hardwoods, as promoted by Coed Cymru.
- 2.22. In Wales in 1998/99 there were some 4,099 full time equivalent jobs in forestry representing 14% of UK forestry employment. These forestry jobs break down as indicated in **Table 2.6**.

Table 2.6: Employment in forestry

Employment by sector		Employers in forestry	
Sector	% of forestry employment in 1998/99	Employer	FTE 1998/99
Processing	53%	Wood processing industries	2,130 FTE
Harvesting and haulage	15%	Private forest owners	987 FTE
Establishment and maintenance	15%	Forestry Commission	567 FTE
Non-forest work	11%	Private companies/contractors	298 FTE
All other forest based work	5%		

Implications for essential dwellings

- 2.23. The recent rapid rise in farm incomes, primarily associated with the livestock sector, indicates that there is still likely to be a continuing need for new agricultural dwellings to meet the functional needs of farming, although the continuing increase in farm size in mainstream agriculture is likely to limit the growth in this demand. However, the full implications of CAP reform are unlikely to be known for a few years yet. On the other hand, there is little indication of an ongoing need for essential dwellings in support of the forestry sector where the majority of forestry work is now undertaken by contractors and peripatetic workers.

TRENDS IN THE SALE OF FARM PROPERTIES

- 2.24. There is evidence from the Royal Institution of Chartered Surveyors (RICS) that uncertainty over the implications of CAP reform has reduced the sale of farms and farmland over the last year⁸. However, RICS also reports that land values have risen

⁸ RICS Policy Unit. Rural Land Markets Surveys of Great Britain, published quarterly

to record levels. In Wales, during the second half of 2003 prices rose to £4,384 / ha (£1,774/acre). Furthermore, the share of farms bought by non-farmers in England and Wales rose to 51% in the last three months of 2003⁹. This trend in Wales is significant as hobby/lifestyle farmers are changing the traditional structure of farming. This is evident in the increase in small-holdings over the last few years with holdings under 5 hectares now making up 37% of all farm holdings in Wales (**Table 2.7** – see also para 2.4 and footnote). In 2001 the average farm size in Wales was 50 hectares with a total of 28,780 holdings, while in 2002 the average size had reduced to 40 hectares with a total of 36,473 holdings, against a background of larger farms continuing to get larger.

Table 2.7: Number of holdings by size category in Wales (2002)

0 – 4.9 ha	5 – 19.9 ha	20 – 49.9 ha	50 – 99.9 ha	100 – 199 ha	200+ ha
13,588 (37%)	7,856 (21%)	6,080 (17%)	4,968 (14%)	2,880 (8%)	1,101 (3%)

Source: Wales in figures – NAW

- 2.25. The influence of non-farm purchasers is clearly borne out by a questionnaire survey of estate agents across Wales (26 completed). This confirmed that at sale most farms are lotted up, with a single farm frequently sold as up to eight separate lots, often over a period of time. Agents were of the clear view that agricultural workers can no longer afford to purchase local dwellings even with an agricultural occupancy condition in place (which will reduce the value of the property by 30%-50% of the open market value, depending on the size of the property, with larger properties experiencing greater discounts). This is reinforced by the view from agents that only 10% of those viewing agricultural dwellings with occupancy conditions would be able to meet the agricultural occupancy condition. Yet the market remains strong for farm properties, equestrian properties and other rural enterprises.
- 2.26. In England, the sale of rural plots has been identified by the Office of the Deputy Prime Minister (ODPM) of key concern. In a letter to all chief planning officers in England, the Head of Planning Development Control in ODPM, noted that “*the sub-division of agricultural land into small plots for sale, usually on the internet, creates problems for communities and planning control*” (19th April 2004). This letter goes on to identify potential remedies and strategies. In Wales, in response to Assembly Questions, the Minister issued a letter to local planning authorities on 14 December 2004.

Implications for essential dwellings

- 2.27. The above reveals a telling picture. The sale of farm properties and dwellings with occupancy conditions is buoyant but almost certainly fuelled through purchase by those outside agriculture and forestry. At the same time there is a clear and strong market for the creation of small-holdings which have the potential to stimulate new pressure for agricultural dwellings in support of quasi agricultural activities in the future.

⁹ RICS Rural Land Market Survey

TRENDS IN RURAL HOUSE PRICES AND AFFORDABILITY

- 2.28. These trends are mirrored in the wider rural property market where there has been a substantial rise in the value of rural properties over the last three years. Figures from the Land Registry bear this out. **Table 2.8** gives an all-Wales perspective on rising house prices, and then picks out several rural counties as examples.
- 2.29. For the whole of Wales house prices have risen by around 23% for the last two years (2002/03), giving an overall two year increase of 51.6%. But Carmarthenshire (77.3%), Ceredigion (69.4%), Gwynedd (68.6%) and Powys (67.7%) have all comfortably exceeded the national rate of growth, whilst Flintshire (46.6%) and Monmouthshire (36.6%) have effectively lagged. These percentage figures essentially hide a situation where property prices in more rural counties have been catching up with those in more accessible parts of Wales.
- 2.30. The detail of house price rise changes county-by-county will be explained by a variety of locally-derived factors such as local demographic and economic change, and the state of the local housing stock. But it is interesting that the price of semi-detached and terraced houses has risen 5% -10% faster than for detached houses. Detached houses are still much more expensive on average, but this trend has clear implications in compounding affordability problems towards the bottom end of the housing market.
- 2.31. In the past, second homes have been identified as a partial cause of such price rises in rural areas and consequent affordability problems. However, work undertaken on behalf of the Welsh Assembly Government¹⁰ has indicated that there is no relationship between house prices and second and holiday home concentrations (along the coast, within the National Parks and Welsh AONBs, and in areas easily accessible to England such as the Vale of Glamorgan). The suggestion is that demographic issues have played an important factor in the demand for housing in Wales, with a noticeable increase in retired migrants and commuters willing to travel longer distances to work and with home working now seen to create an additional pressure on the rural housing stock. Thus there are concentrations of commuter pressures in small towns in the South East and North West Wales which have placed considerable pressure on local housing markets. In rural areas of Wales reduced affordability and poor housing access is seen to be a product of low wages, as much as from external housing pressures.
- 2.32. Rural housing affordability, which is now an issue across most of the UK, has been picked up as a major concern by nearly all those consulted through this study. Rising rural house prices have drawn the bottom of the housing ladder away from an increasing range of people, especially those in the lower paid sectors such as tourism and agriculture. Whereas obtaining affordable housing was previously seen as an issue only for the young and those on low incomes, family groups with older children can now find themselves unable to afford a rural home. A paper submitted by Powys County Council to the Rural Partnership indicated that while house prices in the County had risen by 68% in 2003 the average Powys home cost more than six times the average personal income.

¹⁰ Tewdwr-Jones M, Gallent N and Mace A (2002) *Second Homes and Holiday Homes and the Land Use Planning System*, Welsh Assembly Government, Cardiff

Table 2.8: House price changes Jan-Mar 2002 to Jan-Mar 2004

		Detached		Semi-Detached		Terraced		Flat/Maisonette		Overall	
		average price	annual increase	average price	annual increase	average price	annual increase	average price	annual increase	average price	annual increase
Wales	Jan-Mar 2004	£173,981	20.3%	£104,763	29.2%	£81,502	27.4%	£106,741	16.8%	£115,184	23.6%
	Jan-Mar 2003	£144,615	24.5%	£81,080	20.7%	£63,971	25.6%	£91,386	20.6%	£93,162	22.6%
	Jan-Mar 2002	£116,132		£67,195		£50,933		£75,780		£76,003	
Carmarthenshire	Jan-Mar 2004	£147,873	19.7%	£81,271	30.5%	£64,807	33.5%	£84,666	91.3%	£104,315	31.2%
	Jan-Mar 2003	£123,572	33.2%	£62,288	35.9%	£48,544	29.6%	£44,255		£79,504	35.2%
	Jan-Mar 2002	£92,737		£45,834		£37,462		~		£58,822	
Ceredigion	Jan-Mar 2004	£163,840	24.1%	£104,667	29.7%	£101,311	16.1%	£78,000	26.4%	£136,686	29.4%
	Jan-Mar 2003	£132,004	35.8%	£80,724	27.6%	£87,247	30.1%	£61,701	7.1%	£105,612	30.9%
	Jan-Mar 2002	£97,172		£63,254		£67,066		£57,590		£80,696	
Flintshire	Jan-Mar 2004	£167,753	14.8%	£97,267	24.8%	£81,718	31.6%	£58,350	10.3%	£116,828	15.9%
	Jan-Mar 2003	£146,090	21.4%	£77,941	28.1%	£62,102	27.0%	£52,880	4.6%	£100,813	26.5%
Gwynedd	Jan-Mar 2004	£168,099	27.8%	£109,833	30.8%	£86,097	35.5%	£90,659	57.3%	£114,256	27.4%
	Jan-Mar 2003	£131,575	30.2%	£83,988	36.6%	£63,525	32.8%	£57,625	45.6%	£89,675	32.3%
	Jan-Mar 2002	£101,074		£61,496		£47,825		£39,566		£67,777	
Monmouthshire	Jan-Mar 2004	£219,289	7.5%	£136,712	10.4%	£124,611	24.8%	£99,765	29.9%	£164,775	11.5%
	Jan-Mar 2003	£203,984	19.4%	£123,867	43.8%	£99,870	25.6%	£76,788	34.3%	£147,739	22.5%
	Jan-Mar 2002	£170,889		£86,111		£79,532		£57,170		£120,625	
Powys	Jan-Mar 2004	£190,630	23.1%	£107,533	26.0%	£88,314	13.7%	~	~	£140,986	24.7%
	Jan-Mar 2003	£154,900	31.9%	£85,357	28.7%	£77,668	50.3%	£45,750	10.6%	£113,073	34.5%
	Jan-Mar 2002	£117,450		£66,318		£51,660		£41,375		£84,052	

Where there were less than 5 sales data is suppressed to avoid introduced bias

Source - <http://www.landreg.gov.uk/propertyprice/interactive/>

- 2.33. As noted by the Royal Town Planning Institute, the shortage of affordable and modestly priced housing is exacerbated by the preference of developers to build larger, more profitable housing catering for commuters, a point that was also picked up by community consultees in *What Sort of Countryside Do We Want?*¹¹ In addition, NFU Cymru noted that the problem of high house prices is compounded by a lack of rural rented accommodation and the increasing difficulty faced by Housing Associations of buying houses and acquiring land on which to build houses.

Implications for essential dwellings

- 2.34. These issues are important context for the consideration of essential dwellings. Although essential dwellings are clearly separated from other types of housing development in policy, the increasing value of rural housing in Wales and the problems of affordability this causes, impinge on essential dwellings in two ways:
- worsening affordability means that opportunities for alternative accommodation to essential dwellings for agricultural and forestry workers are reduced;
 - the increasing value of rural dwellings boosts the incentive to try and get occupancy conditions released.
- 2.35. Thus, independent of the conditions in agriculture and forestry the state of the wider housing market is increasing pressure on the supply of essential dwellings.

THE CHANGING FACE OF RURAL COMMUNITIES

- 2.36. The current changes in property prices and occupancy in rural Wales are seen as a central contributor to the out migration of the young from rural Wales and thus an increasingly ageing population. Between 1991 and 1999 the population aged between 15-29 years old declined by 9% in the nine rural authorities in Wales¹², although for the rest of Wales the decline was greater at 12%. At the same time, in rural Wales the population over retirement age was 23% in 1999 compared with 19% for the rest of Wales¹³. These figures are broadly confirmed by the 2001 Census which shows that in four selected rural counties (Anglesey, Carmarthenshire, Ceredigion and Powys) the percentage of the population over 60 is, on average, 2.5% more than the national average, compared to Flintshire and the Vale of Glamorgan where the figures are much closer to the national average (**Table 2.9**).

¹¹ Institute of Rural Sciences, University of Wales and Land Use Consultants (2004) *What Sort of Countryside Do We Want?* For the Welsh Assembly Government

¹² In the Report of ARD Committee of National Assembly for Wales *Diversifying the Rural Economy* (2001) the unitary authorities of Anglesey, Carmarthenshire, Ceredigion, Conwy, Denbighshire, Gwynedd, Monmouthshire, Pembrokeshire and Powys are identified as embodying rural Wales

¹³ Report of ARD Committee of National Assembly for Wales (2001) *Diversifying the Rural Economy*

Table 2.9: Age structure of sample counties in Wales taken from the 2001 Census

Lpa	<16	16-19	20-29	30-59	60-74	75+	Av. age
National average							
England and Wales	20.2%	4.9%	12.6%	41.5%	13.3%	7.6%	38.6
Counties under urban influence							
Vale of Glamorgan	21.5%	5.1%	9.8%	41.6%	13.8%	8.2%	39.3
Flintshire	20.6%	4.9%	11.4%	42.9%	13.5%	6.8%	38.6
Rural counties							
Carmarthenshire	19.5%	4.8%	10.1%	40.5%	15.7%	9.4%	41.1
Powys	19.4%	4.5%	8.8%	41.6%	16.1%	9.6%	41.7
Ceredigion	17.0%	6.4%	14.0%	38.4%	15.2%	9.0%	40.5
Anglesey	19.5%	4.6%	10.2%	40.7%	16.2%	8.7%	41.1

- 2.37. These trends are highlighted by a more detailed study of demographic change in north west Wales¹⁴. This indicates that Anglesey expects to lose about 10% of its population by 2016, with the population of the remainder of the region expected to remain roughly stable, but with a net loss of the young. The main reasons cited by those leaving are limited employment opportunities, low wages, social adjustment (in those returning to their origins) and poor access to key services and housing – illustrating that house prices are only one of a mix of factors driving these demographic changes.
- 2.38. In turn, the rapidly changing population structure of rural (and urban) communities has been blamed for the loss of identity and cohesion of local communities, with incomers seen as unwilling to play a part in the life of the community and lacking an appreciation of community life¹⁵. It is also seen as threatening the Welsh speaking heartlands, with the percentage of Welsh speakers notably higher in rural areas. Anglesey, Gwynedd, Ceredigion, Carmarthenshire and Conwy are the top five Welsh speaking authorities with the first four of these having over 50% of the population (aged 3+) able to either speak, read or write Welsh¹⁶.
- 2.39. **Implications for essential dwellings:** These changes in the structure of rural Welsh communities have implications for essential dwellings, in that farmers, while now making up only 8% of the rural population, are seen as a traditional focus of rural communities and key upholders of the Welsh language (para 2.43). Equally there is also a need to encourage the young to stay in farming, both for the continuation of the industry and to contribute to a more diverse age structure in rural communities (para 2.15).

NATIONAL POLICY CONTEXT

- 2.40. Turning to the national policy context, policy for essential dwellings in the open countryside sits within a national policy framework. The *Plan for Wales 2001* has three guiding principles:

¹⁴ Jones et al 2001

¹⁵ The Institute of Rural Sciences, University of Wales and Land Use Consultants (2004) *What Sort of Countryside Do We Want?* for the National Assembly for Wales

¹⁶ Welsh Tourism Business Monitor, 2002

- Acting now for the future (Sustainable Development)
 - Attacking poverty (Social Inclusion)
 - Achieving equality in all we do (Equal Opportunities)
- 2.41. Central to future policy for essential dwellings in the open countryside is national policy for agriculture and forestry in Wales which in turn is linked to policy for the broader rural economy; that relating to affordable housing and housing more generally; and national planning policy for rural areas.

Agricultural and forestry policy

- 2.42. **Agricultural policy and farm diversification:** Over the last two decades, in anticipation of reform of the CAP, UK policy has increasingly focused on the importance of farm diversification as a way of maintaining the viability of farm businesses. This was set out in the UK Government’s Action Plan for Farming (2000)¹⁷ and in Wales has been delivered through *The Wales Rural Development Programme/Plan* and Objective 1. In turn, the continuing importance of agriculture and of diversifying the farm economy is captured in the Welsh Assembly Government’s strategy for agriculture – *Farming for the Future – A new direction for agriculture*.
- 2.43. This strategy emphasises that “*Wales needs a strong, viable agricultural industry*” with agriculture and food processing forming an important part of the national and rural economy. But it is equally recognised that “*farming is responsible for shaping the quality of the rural environment and, by maintaining the countryside, makes a crucial indirect contribution to tourism*” while “*the family farm is integral to the character of rural Wales, and to the social fabric of rural communities*”. The strategy goes on to note that:
- “socially, the family farm defines the character of Welsh rural society, and its sense of identity. The numbers directly and indirectly employed in farming make a crucial contribution towards sustaining rural communities. Farming is also, in much of rural Wales, one of the most important areas of life in which Welsh remains the natural, everyday means of communication” with.... “53% of farm owners and managers in Wales speaking Welsh”.[1.3]*
- 2.44. Within the Welsh Assembly Government’s objective to maintain viable and balanced rural communities the focus of the strategy is on helping agriculture to adapt, with the aim of delivering:
- *“safe, healthy food and non-food products, produced with high standards of care for the environment and animal welfare and targeted much more closely on market opportunities to give farming families a better return;*
 - *a countryside which is visually attractive and rich in its biodiversity, archaeology, history and culture, not only for its own sake but for people’s enjoyment and to help support tourism;*
 - *distinctive local food products as the basis for a cuisine which helps promote tourism; and*

¹⁷ Ministry of Agriculture, Fisheries and Food (30 March 2000) *Action Plan for Farming* (for the UK)

- *which through all the above, contributes to a positive image for Wales in the world”.[2.2]*
- 2.45. Slowing the decline in agricultural employment while creating alternative rural employment that enables the young to stay in rural areas are seen as key challenges – with diversification of the rural economy a central plank of the National Economic Development Strategy¹⁸. In parallel *Farming for the Future* has the key message that farming families need to **diversify**, creating viable incomes from agriculture and other sources in a way that sustains the family and the environment. It identifies the future opportunities for moving away from commodity markets by developing value-added and collaborative products, with agriculture just one of a range of options for generating income.
- 2.46. **Forestry and woodland policy:** This emphasis on agricultural diversification is mirrored in forestry policy for Wales – *Woodlands for Wales* – where the emphasis is now clearly on promoting multi-benefit forestry with a vision that:
- “Wales will be known for its high quality woodlands that enhance the landscape, are appropriate to local conditions and have a diverse mixture of species and habitats. These will:*
- *provide real social and community benefits, both locally and nationally*
 - *support thriving woodland-based industries; and*
 - *contribute to a better quality environment throughout Wales.”*

Policy for housing and affordable housing

- 2.47. In response to broad concerns about housing affordability the **Barker review** of housing supply in the UK (2004)¹⁹, commissioned by the UK Government, focused on creating a more flexible housing market in the UK. A number of recommendations were made for planning, focusing on planning taking greater account of the housing market and with a central recommendation that more land should be made available to ‘free up’ the housing market to meet regional affordability targets.
- 2.48. But the review is silent on the particular issues raised by planning for housing in rural areas, and on commuting. The report’s broad recommendations concerning the responsiveness and flexibility of housing markets must have different application across urban and rural areas. Prevailing planning policies in rural areas are more restrictive for well-established reasons not just concerning environmental protection, but also capturing a strategic approach to sustainability.
- 2.49. A more specific response to housing affordability is provided in the national housing strategy (2001)²⁰ and in the report of the Environment, Planning and Countryside Committee of the Welsh Assembly Government into the *Planning aspects associated with the provision of affordable housing and sustainable communities in the countryside*

¹⁸ Welsh Assembly Government (2001) *A Winning Wales – the national economic development strategy*

¹⁹ Barker Review Final Report – Recommendations Review of Housing Supply, *Delivering Sustainability: Securing our Future Housing Needs, HM Treasury 2004.*

²⁰ Welsh Assembly Government (2001) *Better Homes for People in Wales*

- (February, 2004). This work does not address essential dwellings in any way but provides important context to consideration of their future.
- 2.50. In their report the Committee recommends a broad uplift and greater flexibility in the engagement of planning with housing affordability. They recommend that Ipas should be able to develop locally responsive policies that reflect the local housing market and local evidence of need, as defined by Local Housing Needs Assessment (potentially with different affordable housing planning policies developed for different areas of the authority). Such flexibility should be set within a national framework developed by the Welsh Assembly Government. This national framework would include a suite of options that local planning authorities can select from to define affordability within their development plans. It would also clarify the options and powers available to local authorities to develop these policies including:
- the use of 'locals only' policies
 - the use of Section 106 agreements
 - the use of exceptions sites for affordable housing where supported by surveys of need, such as Local Housing Needs Assessment
 - the use of targets or quotas for affordable housing, which the WAG should enable local planning authorities to impose on developers.
- (LUC summary)
- 2.51. The Committee noted further, that where there is acute pressure on the housing market, it would be appropriate for Ipas to develop 'locals only' policies for **all** new housing (not just affordable housing), clearly linked to an assessment of local need, although it was acknowledged that careful thought would need to be given to the definition of 'local'. The Committee also noted that current guidance on the Welsh Language and the planning system (TAN (W) 20) is of insufficient use when considering rural housing development and should be strengthened.
- 2.52. At the plenary session on 23rd June 2004 the Minister for Environment, Planning and Countryside, welcomed the Committee's report and supported the majority of its recommendations, confirming that it was the intention of the Welsh Assembly Government to incorporate the main recommendations of the report into a revision of TAN (W) 2 *Planning and Affordable Housing*. TAN (W) 2 is scheduled for public consultation later this year.

National planning policy for rural areas

- 2.53. Finally, national planning policy for Wales, as set out in *Planning Policy Wales (PPW) 2002*, reflects other policy areas and sees the countryside as a dynamic and multi-purpose resource. But continuing a long held planning principle it confirms that the majority of development should be located within and around existing rural settlements – with new building in the open countryside strictly controlled.
- 2.54. Reflecting the emphasis on **diversification of the rural economy**, new businesses in rural areas are seen as essential to sustain and improve rural communities with small-scale enterprises identified as having a vital role in promoting healthy economic activity which can contribute to both local and national prosperity. Development

sites in support of this economic diversification are seen as likely to be small scale and generally located within settlement boundaries, with the exception of **farm diversification**, where the emphasis will be on the adaptation of existing farm buildings and the potential provision of sensitively designed new buildings within an existing farm complex.

- 2.55. In terms of **rural housing provision**, *Planning Policy Wales* notes that the majority of rural housing needs should be met in existing rural settlements and through the sensitive infilling and extension of small housing groups while the need for affordable housing, as identified through Housing Needs Surveys, may be met through the provision of rural exceptions sites (although this area of policy may be expanded by the revision of TAN (W) 2, as identified above).

Implications of national policy for essential dwellings

- 2.56. The four factors of relevance to future policy for essential dwellings that emerge out of this brief review of national policy are:
- the important and long-held emphasis in national planning policy on restricting development in the open countryside;
 - the strong policy emphasis on farm diversification with the implication that in the future farm incomes will increasingly be derived from a range of different sources of which agriculture will only form a part;
 - the clear identification in national policy of family farms as central to the community life of rural Wales;
 - the need to see essential dwelling provision against a wider backdrop of policy relating to local and affordable housing in rural Wales.

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3. SPECIFIC POLICIES RELATING TO ESSENTIAL DWELLINGS IN THE OPEN COUNTRYSIDE

NATIONAL POLICY ON ESSENTIAL DWELLINGS IN THE OPEN COUNTRYSIDE

- 3.1. Restriction on residential development in the open countryside has been a long held planning principle. Residential development in support of agriculture and forestry has been one of the few exceptions to this principle. This Chapter explores the evolution of national planning policy relating to essential dwellings in the open countryside and how this has been interpreted through local /UDP plan policy.

WO Circular 49/73

- 3.2. Guidance relating to agricultural and forestry workers' dwellings in the open countryside ran unchanged in England and Wales for almost 20 years until 1992. The 'material factors' in considering applications for essential dwellings in the open countryside, were set out in the Annex to Welsh Office (WO) Circular 49/73 (Welsh Office 20 February 1973) as:

- a) the viability of the [farm] enterprise
- b) the labour requirements of the enterprise
- c) how many workers needed to live on the farm
- d) the existing accommodation on the farm and the reasons why it did not meet existing needs.

WO Circular 49/73

Box 3.1

Viability: By viability it was assumed that the farm enterprise must offer a competent farmer the prospect of a sufficient livelihood ie at least equivalent to a minimum agricultural wage, and probably more, allowing for the investment requirements of a farm business. An intention to re-organise or expand a farm business would require firm evidence, such as investment of capital in farm buildings.

Labour requirements: Additional workers might be needed if a farmer acquired more land or animals or changed to a different category of farming. It was noted in appropriate cases that the applicant might need to show why the extra work could not reasonably be dealt with by the reorganisation of the labour force already on the farm.

Need to live on the farm: Need to live on the farm was recognised as primarily relating to specialist workers eg cowmen or supervisors of intensive livestock. Other possible requirements cited included the need:

- for the farmer himself to protect his property and prevent trespass;
- to prevent the loss of labour or to attract required labour, even if the nature of the work did not necessitate the worker to live on the farm – this was considered to apply particularly on isolated farms;
- to improve accommodation to attract the required managerial staff or skilled workers;
- to provide separate housing for a son or daughter where the farmer and his family jointly run the farm business (evidence was required that genuine efforts had been made to obtain suitable housing in the locality).

The circular also noted that, whilst purely personal considerations (eg a farmer's desire to build a retirement home on his/her farm) did not affect agricultural need, they could be taken into account and could tip the scales where other issues were finely balanced.

Existing accommodation: The guidance required evidence of a lack of suitable existing housing on the holding and potentially in the locality

PPG7: The Countryside and the Rural Economy (1992) – Annex E

- 3.3. In 1992 the Annex to the Circular was cancelled with the publication of PPG7 *The Countryside and the Rural Economy* (Welsh Office, January 1992). Annex E of this PPG provided more extensive guidance on agricultural and forestry dwellings. Like Circular 49/73, Annex E recognised that accommodation for agricultural workers should normally be found in adjacent settlements. It also identified, like its predecessor, that where a dwelling is justified it should conform with other normal planning requirements. However, PPG7 recognised the speculative demands which could drive applications for dwellings in the open countryside noting [E3]....*“some is speculative and stems from applicants seeking to exploit the physical or financial advantages of a new house in the countryside. It is therefore essential that all applications for planning permission for new agricultural or forestry dwellings are scrutinised thoroughly with the aim of detecting attempts to abuse the concession....”*. On this basis it was recommended that local authorities should consider applying a functional and financial test with:
- a) a functional test, applicable in all cases, to establish whether it was essential for the proper functioning of the enterprise for one or more workers to be readily available at most times;
 - b) and in cases where a functional test was not conclusive, the potential use of a financial test. It was noted that the purpose of the financial test was *“not to judge the likely present or future financial viability of the enterprise as such, since this is not a proper concern of the planning system, but to assess land use implications.... and the likelihood of the proposed development being carried through”*.
- 3.4. Having confirmed a functional need and financial soundness, as appropriate, the guidance noted the necessity of considering the number of workers needed to meet the identified requirements and the extent to which any existing accommodation in the area was suitable and available for occupation by the worker concerned [E8].
- 3.5. In preparing the revised guidance, the specific loopholes which the Government sought to close were:
- the protection of property could no longer be used as a justification for an agricultural dwelling;
 - agricultural need could not justify the provision of new dwellings as retirement homes;
 - the size and expense of dwellings must be commensurate with the established functional need;

- the recent history of the land and building sales on the unit may be a material consideration, for example, recent sale of a dwelling from the unit would indicate a lack of agricultural need.
- 3.6. The guidance also highlighted the use of conditions and obligations to ensure that such dwellings stayed within the farming/forestry community, for example, through the use of an occupancy condition and the potential use of planning obligations to tie a farmhouse to adjacent farm land to prevent it being sold separately from the land.

PPG7: The Countryside: Environmental Quality and Economic and Social Development – Annex I (England only)

- 3.7. In 1997, PPG7 was revised in England only, when a new five-part set of criteria was introduced in PPG7 *The Countryside: Environmental Quality and Economic and Social Development*, Annex I. The introduction of this more stringent set of criteria for agricultural and forestry dwellings reflected the findings and recommendations of the 1995 report *Planning Controls over Agricultural and Forestry Development and Rural Building Conversions*. A particular concern of this report was the continuing and compelling evidence of successful applications for dwellings in the open countryside where there was little association with an agricultural enterprise and where the primary motivation for the property was to gain ‘a house in the country’. Examples were identified of farms that had had a new dwelling every year for five years; dwellings that were constructed in support of a new enterprise which subsequently never materialised; and where large new dwellings were approved in support of proposals where there was a dubious functional need and where the enterprise was so small that its financial sustainability was in severe doubt. Thus Annex I of the guidance in revised PPG7 (1997) required that before a *permanent* dwelling could be considered, five requirements had to be satisfied:
- a) an existing functional need existed;
 - b) the need related to a full-time worker, or one primarily involved in agriculture;
 - c) the unit and the enterprise concerned had been operating for at least three years, had been profitable for at least one, and was financially sound and likely to remain so;
 - d) no other dwelling on the unit or other dwelling in the area was suitable and available to meet the identified need;
 - e) siting, access and other normal planning requirements were satisfied.
- 3.8. In cases where the enterprise was new (either on newly created units or a new enterprise on an existing unit), temporary accommodation was recommended for the first three years of the enterprise so long as five criteria (similar to the above) were satisfied (Annex I paragraph I4). This policy did not however apply across Wales, where Annex E of the 1992 PPG7 remained in force.

Planning Guidance (Wales) Planning Policy First Revision (April 1999)

- 3.9. This guidance was supplemented by the publication in April 1999 of *Planning Guidance (Wales) Planning Policy First Revision*. Paragraph 10.6.2 noted the particular considerations for essential dwellings for agriculture and forestry as:
- a) a functional test, in terms of both current and likely future requirements for workers to be readily available at most times; and
 - b) a financial test to demonstrate economic viability and to provide evidence of the size of dwelling the unit can sustain.
- 3.10. Paragraph 10.6.3 went on to note that if the dwelling was needed to support a new farming activity “*but the case is not completely proven*”, it should normally be provided as a temporary structure for the first three years.

TAN (W) 6 Agricultural and Rural Development (June 2000)

- 3.11. TAN (W) 6 *Agricultural and Rural Development* (NAW, June 2000) was published some 14 months later. It cancelled Annex E of PPG7 and introduced new guidance, essentially the same as that running in England under PPG7 (1997) Annex I. Paragraph 41 of TAN (W) 6 reproduces the five criteria set out in PPG7 (1997) (para 3.7 above). These criteria still apply.
- 3.12. With the publication of *Planning Policy Wales (WAG)* (2002) there was no change in policy in this area. The advice set out in paragraphs 9.3.6-8 is similar to that of the First Revision it replaced. The guidance requires a functional and financial test, and also makes reference to the use of temporary accommodation for new enterprises, as reflected in TAN (W) 6. As in other recent guidance, *Planning Policy Wales* also clearly sets out that “*agricultural needs cannot justify the provision of new dwellings as retirement homes for farmers*”. The guidance notes that:
- “The fact that a single house on a particular site would be unobtrusive is not, by itself, a good argument in favour of permission; such permissions could be granted too often, to the overall detriment of the character of an area.”*[9.3.6]
- 3.13. This guidance only applies to agricultural and forestry dwellings. No supplementary or primary guidance has been provided for other ‘essential’ dwellings, to support ventures such as equestrian centres, fishing lakes, game bird rearing, kennels or catteries, or dwellings connected with other rural diversification enterprises.
- 3.14. The specific policy guidance for essential dwellings for agricultural and forestry workers set out in TAN (W) 6 is summarized in **Box 3.2**.

Box 3.2

TAN (W) 6 Policy relating to agricultural and forestry workers’ dwellings in the open countryside:

New permanent dwellings should only be allowed to support existing agricultural activities on well established agricultural units providing (41):

- (a) there is a clearly established *existing* functional need;

- (b) 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;
- (c) 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;
- (d) the functional need could not be fulfilled by another dwelling already on the unit, or any other existing accommodation in the area which is suitable and available for occupation by the workers concerned; and
- (e) other normal planning requirements, for example on siting and access, are satisfied.

The functional test should establish the need for workers to be readily available at most times (42). Requirements arising from food processing, cannot be used to justify an agricultural dwelling (44).

Agricultural dwellings should be of a size commensurate with the established functional requirement (47). The financial test, in addition to establishing the economic viability of the overall enterprise, should provide evidence of the size of dwelling which the unit can sustain.

Where there is concern about potential abuse of the planning system, the recent history of the holding can be investigated to establish whether land or buildings have been sold away, including buildings suitable for conversion (43).

In certain cases it may be appropriate through condition to remove certain permitted development rights so that the size and character of the dwelling continues to reflect its functional purpose (48).

Any dwelling should be sited so that it is able to fulfill its functional need, and should be well related to existing dwellings and farm buildings (49).

Temporary dwellings

If the case for a permanent dwelling is not completely proven, it should be provided as a temporary dwelling for the first three years (such as a caravan or wooden structure that can easily be dismantled). It should satisfy the following criteria (50):

- (a) 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);
- (b) functional need;
- (c) clear evidence that the proposed enterprise has been planned on a sound financial basis;
- (d) the functional need could not be fulfilled by another dwelling on the unit, or any other existing accommodation in the area which is suitable and available for occupation by the workers concerned;
- (e) other normal planning requirements, for example on siting and access, are satisfied.

The period of the temporary permission should be made clear. It will be unsatisfactory to grant successive extensions to a temporary permission over a period of more than three years. If permission for a temporary dwelling is granted, permission for a permanent dwelling should not be granted unless the full criteria for a permanent dwelling can be met (51).

Occupancy conditions

Dwellings approved for agricultural or forestry workers should be the subject of an occupancy condition, to retain the dwelling to fulfill its identified function (53).

Although not set out in the TAN a standard form of wording for this condition is: *“The occupation of the dwelling shall be limited to a person solely or mainly working, in the locality in agriculture or in forestry – or a widow or a widower of such a person, and any resident dependants.”*

There may also be scope for imposing an occupancy condition on other existing dwellings on the farm, to help protect pressure on the countryside for new dwellings. LPAs may also 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 without further application to the authority (55).

Dwellings with occupancy conditions should not be kept vacant simply by virtue of their occupancy condition. Applications for the removal of occupancy conditions should be considered on the basis of realistic assessments of the existing need for them, bearing in mind that it is the need for a dwelling for someone solely, mainly or last working in agriculture in an area as a whole and not on the particular holding which is relevant (56).

3.15. An important point is that no specific guidance is offered to either Ipas or the farming community on how the tests set out in TAN (W) 6 should be applied. *A Farmers’ Guide to the Planning System* remains silent on this point. This is returned to in Chapter 6.

In summary

3.16. In summary, the main changes in guidance that have been introduced over the years to try and avoid abuse of this planning concession for a dwelling in the countryside are:

- introduction of more stringent tests with the aim of detecting attempts to abuse the concession for a dwelling in the open countryside – with these tests focusing on **a functional and a financial test**;
- identification that the protection of property cannot be used as a justification for an agricultural dwelling;
- identification that new dwellings as retirement homes are not covered by this concession;
- identification that the size and expense of a dwelling must be commensurate with the established functional need;
- identification that the recent history of the land and building sales on the unit may be a material consideration;
- identification that the need to live on the farm cannot be used as a justification for a new dwelling, for example, in the case of family members, or to attract the required labour, unless the functional need is clearly met.

- 3.17. Equally it should be noted that TAN (W) 6 does not note, unlike the earlier circular 49/73 and PPG7 (1992), that accommodation for agricultural workers should normally be found in adjacent settlements.

LOCAL PLANNING POLICIES FOR ESSENTIAL DWELLINGS IN THE OPEN COUNTRYSIDE

- 3.18. Against the above background, the existing and emerging UDPs covering the nine sample lpas have been examined in detail to assess their rural housing policies and their policies for essential dwellings in the open countryside.
- 3.19. Plans reviewed were those currently used to guide planning decisions:
- Blaenau Gwent UDP Deposit Written Statement, June 2000
 - Brecon Beacons National Park, Adopted Local Plan, May 1999
 - Bridgend County Borough UDP, Deposit Version, May 2001
 - Denbighshire County Council UDP (1996 – 2011), Deposit Version, September 2002
 - Gwynedd Council, Dwyfor Local Plan 1998
 - Joint Unitary Development Plan for Pembrokeshire 2000 – 2016 Deposit Version, February 2002. Pembrokeshire County Council and Pembrokeshire Coast National Park Authority
 - Powys County Council: The Powys County Structure Plan, Replacement, February 1996; Brecknockshire Local Plan, October 1997; Radnorshire Local Plan April 1999; Montgomeryshire Local Plan, Deposit Version October 1995 and Subsequent Modifications.
 - Swansea Local Plan Review, No.1. adopted January 1999 (and Swansea Local Plan Adopted December 1989), and West Glamorgan Structure Plan (Review No. 2) Part A Written Statement and Part B Explanatory Memorandum 1991 – 2006.
 - Wrexham UDP, Deposit Version, March 2000
- 3.20. From the review it appears that the policies within the plans broadly follow current national guidance as outlined above. All place emphasis on the protection of the open countryside from development and all restrict housing development to sites within and on the edge of more major settlements with allowance for infilling within existing groups of dwellings in the wider countryside. Most place an emphasis on the conversion of rural building to economic use, although some of the older plans still support residential conversions. Most also allow for exceptions sites for affordable rural housing. The one plan that clearly deviates from current national planning guidance is the Joint Unitary Plan for Pembrokeshire which restricts the provision of new general market and renovated housing within the National Park to those who can meet local needs criteria²¹.

²¹ On its introduction the Assembly Government objected to this policy on the basis that no evidence was provided in its support. The PCNPA subsequently lost high court challenges to this policy. Since then, however, the PCNPA has developed supporting evidence which is being tested at Public Inquiry into the Draft Deposit Plan.

Policies for essential dwellings in the open countryside

- 3.21. Looking specifically at policies for essential dwellings in the open countryside, all plans reviewed have policies for the provision of essential dwellings to meet the needs of agriculture and forestry. In addition, three plans relate essential need to other rural activities. In the Swansea Local Plan 1989 reference is made to social needs which in part reflects the earlier guidance of WO circular 49/73 which identifies that there may be a justification for providing an agricultural dwelling to provide accommodation for other members of the family working on the farm or to attract specialist skills:

Swansea Local Plan 1989: Policy VI

“residential development will only be permitted [in the open countryside] where the essential agricultural, or forestry or overriding economic or social needs for a dwelling is proven, and the need for it to be located on the farm or in the woodland rather than in a nearby settlement is proven.”

- 3.22. In the Swansea UDP Pre-Deposit Consultation Draft (2003) Policy EV20 identifies that essential dwellings in the open countryside may also be considered in relation to farm diversification, sustainable tourism, recreation and nature conservation. Equally in the Powys Structure Plan (1996) it is noted in policy H9 that:

“New dwellings in the open countryside will not be permitted,..... unless it can be established to the satisfaction of the local planning authority that the dwelling is essential to house a worker currently employed in agriculture, forestry or other appropriate rural employment, who must live on the spot rather than in a nearby settlement”.

Functional and financial tests

- 3.23. All plans reviewed make reference to a functional test and the majority also mention the need for a financial test, although in three of the older plans the latter has been omitted eg Powys Structure Plan and the Gwynedd Local Plan (1998). In the Brecon Beacons Local Plan 1999 (Policy H8) the need for a financial test has a different emphasis to that set out in TAN (W) 6 and reflects the earlier guidance in PPG7 1992 where a financial test was required only when the functional test was not conclusive:

Brecon Beacons Local Plan 1999 (Policy H8)

“..... Functional evidence must be provided, including a financial assessment if necessary, of the enterprise’s long term capacity to support the proposed occupant of the dwelling”

- 3.24. An important point though, is that even amongst the more up to date plans, mention is not made of the need for the enterprise supporting the application to have been in operation for at least three years (forming part of the financial test). In addition, only three plans make it clear how the functional and financial tests should be met / judged. In the Wrexham UDP (2000) it is noted that the County Borough will use the support of the then Welsh Office Agriculture Department or a recognised agricultural consultant to determine the enterprise’s long term viability, while the Denbighshire UDP (1996 – 2011) in Policy HSG5 states that the Council will commission an independent consultant to be financed by the applicant, to

substantiate the functional need and validate the long term viability of the enterprise and the need for an additional dwelling. It also notes that in all cases the applicant will be required to complete a questionnaire prepared by the Council which includes a functional and financial test to establish that the stated intentions to engage in agriculture or forestry are genuine.

Full-time worker, other dwellings in the locality, and temporary permission

- 3.25. For the other tests required by TAN (W) 6 for a permanent dwelling, only two plans identify that the functional need should be for a full-time worker (a point that is picked up in Chapter 6), while only four plans identify that it should be established that the functional need could not be met by other dwellings in the locality. Furthermore in only three plans is it identified that if the case has not been satisfactorily proven for a permanent dwelling, then it should be provided as a temporary dwelling in the first three years. In none of these cases is there a clear correlation between the age of the plan and the policy coverage.

Other constraints and controls

- 3.26. With regard to other constraints and controls identified in TAN (W) 6:
- five plans identify that the dwelling should be of an **appropriate scale** within the landscape, while only three identify that the size of the dwelling should be commensurate with the functional requirements identified. It is also identified in the Brecon Beacons Local Plan (1999) that: *“The size and type of dwelling.... should not be beyond the means of a worker in the industry concerned to purchase or rent”* (Policy H8);
 - only one plan identifies the potential of reviewing the history of the unit to check for potential abuse, for example, in terms of past dwellings being sold off;
 - only two plans mention the opportunity to tie any new dwelling to the land or other farm buildings of the unit to prevent subsequent fragmentation; and
 - no plans mention the potential of removing permitted development rights to control the subsequent expansion of the dwelling.
- 3.27. At the same time, although not specifically set out in TAN (W) 6, four plans identify a preference for new agricultural workers dwellings to be provided as a conversion of an existing building rather than as a new building. Indeed, the comment has been made by Monmouthshire that the capacity of the County to provide new essential dwellings has been greatly reduced by past policies which favoured residential barn conversions as a means of meeting housing targets in rural areas.

Outline consents

- 3.28. Although no specific reference is made to outline consents in TAN (W) 6, this has been recognised as a potentially problematic area, especially if the functional and financial tests are not applied at the time of the outline application (para 5.5 – 5.6). Such issues have not been covered by the plans reviewed other than in one. The Denbighshire UDP (2002) notes in policy HSG6 that “*The time period for an outline consent will be restricted to two years only, reserved matters to be approved within two years and commencement within three years of the decision date. Proposals for renewing outline consents will only be permitted in exceptional circumstances*”.

Retired farmers

- 3.29. It is made clear in *Planning Policy Wales* that essential dwellings in the open countryside should not be provided for retiring farmers. This is explicitly stated in one plan reviewed. Conversely the Powys County Structure Plan of 1996 suggests that there may be some grounds for treating retiring farmers differently (reflecting the earlier guidance in WO circular 49/73), although it is noted that if there is no agricultural employment justification then a retirement bungalow should be treated exactly the same as any other dwelling in the countryside.

Occupancy conditions

- 3.30. All plans require that an occupancy condition is attached to any new approved essential dwelling. Four plans also mention the opportunity to apply occupancy conditions to other dwellings on the farm as part of the approval for a new essential dwelling.
- 3.31. Equally all plans identify the potential for the lifting of occupancy conditions where the occupancy condition can no longer be fulfilled. Most (but not all) require that clear criteria are met before the lifting of an occupancy condition will be approved. For example:

Denbighshire UDP (1996 – 2011) Policy HSG7

“The removal of an agricultural or forestry occupancy condition will only be permitted provided that:

- (i) The long term housing need on the holding and in the area for an essential dwelling has ceased*
- (ii) Evidence is submitted demonstrating genuine attempts over a 12 month period of time to sell or rent the property at a price reflecting the existence of the occupancy condition to persons eligible under that condition.”*

- 3.32. In the case of the Pembrokeshire Joint UDP an important difference is introduced in that the Plan seeks to encourage the transfer of such dwellings to the affordable housing stock. Thus in Policy 46 it is stated that applicants for the removal of occupancy conditions will normally be required to have offered the dwelling for sale over a sustained period (2 years) at a price to reflect the occupancy condition. Furthermore within the National Park, where it can be fully demonstrated that a

particular dwelling is no longer required to meet the farming needs of the area, permission for the removal of the condition will only be granted if the dwelling can be secured as part of the local housing stock by means of a planning obligation or condition. In these cases, a property need only be advertised for sale at a realistic price for a six month period.

- 3.33. Despite this somewhat varied policy response to national guidance, there is general support amongst planning officers within the sample local authorities to the current guidance in TAN (W) 6 for essential dwellings, although there was a view that there may need to be some flexibility to respond to local circumstances and to respond to different types of pressure in different areas.

In summary

- 3.34. From the plan review it appears that nearly all plans capture the need for the functional and a financial justification for a dwelling in the countryside. Yet across many of the plans, including some of the more recent UDPs, important detail set out in TAN (W) 6 is missing, as indicated above. Furthermore, in the case of some lpas, the age of the extant plan means that it reflects earlier guidance, in some cases going back to WO circular 49/73. This is of concern recognising that the statutory local development plan is the first material consideration in the determination of any planning application. Thus many applications for an essential dwelling in the open countryside may be being judged against criteria that are less demanding than those set out in TAN (W) 6.

CHANGING POLICY CONTEXT IN ENGLAND AND SCOTLAND

- 3.35. In England **Planning Policy Statement (PPS) 7 – Sustainable Development in Rural Areas, 2004** now supersedes PPG7 . Like *Planning Policy Wales*, it seeks “to promote sustainable, diverse and adaptable agriculture sectors” through positive planning polices and recognises that diversification into non-agricultural activities is vital to the continuing viability of many farm enterprises.
- 3.36. For agricultural and forestry dwellings the guidance in the PPS and supporting Annex mirror the approach set out in TAN (W) 6 with one very important change. This is that the special justification for an isolated residential dwelling may also relate to situations where “*accommodation is required to enable.....other full-time workers to live at, or in the immediate vicinity of, their place of work*[10]. This is then amplified in the Annex:

“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”.

LUC emphasis

- 3.37. This new guidance then goes on to note that an occupancy condition will need to be applied to agricultural, forestry and other occupational dwellings, whilst still noting that such dwellings should not be kept vacant by planning conditions that have outlived their usefulness.
- 3.38. In Scotland **Scottish Planning Policy (SPP15: Planning for Rural Development, January 2004)** has been published for consultation. This is a broad and visionary document which does not go into detailed considerations. Specific guidance will be prepared and issued through Planning Advice Notes. In relation to new housing in remoter countryside the draft document refers to small clusters and groups of dwellings being feasible in places where demand has been unsatisfied [22]. It indicates that occupancy conditions tying such dwelling units to agricultural and forestry use will no longer be relevant to such developments. This reinforces the policy approach adopted in *SPP3: Planning for Housing*.
- 3.39. The implications for Wales of these policy changes in England and Scotland are returned to in the final recommendations in this report.

4. TRENDS IN ESSENTIAL DWELLINGS IN THE OPEN COUNTRYSIDE

- 4.1. Having reviewed the policy background, this Chapter explores recent trends in the number and type of planning applications for essential dwellings in the open countryside.

TRENDS IN PLANNING APPLICATIONS FOR NEW AGRICULTURAL AND FORESTRY DWELLINGS

Overall numbers

- 4.2. From the combined results of the email questionnaire to lpas in Wales and subsequent telephone calls to those lpas that had failed to respond to the questionnaire, it appears that the number of applications for new agricultural dwellings over the three year period 1999 – 2002 is little different to the numbers experienced at the beginning of the 1990s.
- 4.3. Overall, the number of planning applications for essential dwellings in the open countryside received **per year** per local authority in Wales during 1999 – 2002 ranged from 1 to 20 (**Table 4.1**). This number per local authority, however, can give a misleading picture because of the very great difference in size of the local planning authorities across Wales.

Table 4.1: Average number of planning applications per year for new essential dwellings in the open countryside (1999–2002 inclusive)

Source	Lpa	No. of planning applications per year for new essential dwellings
< 3 planning applications for new essential dwellings per year		
Q	Blaenau Gwent	<1
T	Cardiff CC	<1
Q	Bridgend	1
Q	Brecon Beacons NPA	1-2
T	Caerphilly CBC	1-2
Q	Gwynedd CC	1-2
Q	Denbighshire	2
3-5 planning applications for new essential dwellings per year		
T	Flintshire CC	3-4
Q	Wrexham	3-4
Q	Swansea	4-5
T	Monmouthshire CC	4-6
5-10 planning applications for new essential dwellings per year		
Q	Pembrokeshire NPA	8
T	Snowdonia NPA	8-9
Q	Powys	9
T	Vale of Glamorgan	7-10
> 10 planning applications for new essential dwellings per year		
T	Pembrokeshire CC	18 (some will overlap with the NP)
T	Carmarthenshire CC	15-20

Q = Questionnaire response
T = telephone discussion

- 4.4. In most cases local authority officers claim that the number of planning applications for essential dwellings in the open countryside is falling. But this drop is thought to be associated with tightening of their planning policies and greater rigour in how such applications are assessed, rather than reflecting any overall fall in demand. Indeed many local authorities pointed to past approvals for dwellings where the functional justification was questionable.

Current pressures for new essential dwellings in the open countryside

- 4.5. In the previous study which led to the current planning guidance on essential dwellings in the countryside – *Planning Controls over Agricultural and Forestry Developments and Rural Building Conversions*, (1995) – it was concluded that the likely future pressure for agricultural dwellings would relate primarily to family circumstances (eg in terms of retirement homes or homes for additional family members); new enterprises developed on bareland sites; and speculative development proposed under the guise of agricultural need. Indeed, this seems to be the case. The impression gained from the questionnaires and telephone calls with Ipas is that the demand for new essential dwellings is currently coming from:

- established family farms where there is a need to provide accommodation for another family member – usually the son or daughter who is assisting the farmer run the business. For example, this has been identified as a clear trend by Carmarthenshire where the need for a second dwellings is often associated with the creation of larger units as a result of farm amalgamations, requiring additional assistance from family members. Related to this, it is the view of the CLA that housing will need to be found in the future for farmers seeking early retirement in response to the current CAP reforms;
- bareland plots arising from the lotting up of farmland at sale, where applications may be more concerned with gaining a ‘house in the country’ than with a genuine agricultural need (although there will clearly be some new agricultural enterprises on a bareland plot that justify a new agricultural dwelling).

- 4.6. These bareland plots appear to be more associated with accessible rural areas, such as Swansea, the Vale of Glamorgan and parts of Carmarthenshire although there are no clear patterns. The Vale reports that much of the pressure for essential dwellings comes from commuters who are working in Cardiff but also want to indulge in hobby farming.

Non-agricultural justifications for an essential dwelling in the open countryside

- 4.7. Following the strong policy emphasis now being placed on farm diversification, there is a view amongst national consultees that there will be increasing demand for essential dwellings in the open countryside in support of on-farm diversification activities, particularly in remote areas. Indeed, it is the view of the CLA that the primary demand for essential dwellings in the future will come from diversification

activities. For example, the Wales Tourist Board (WTB) points to the potential need for dwellings in support of activity centres and serviced accommodation, noting that the British Holiday and Home Park Association has raised this as an issue with the UK Government.

- 4.8. According to the email questionnaire returns, however, in most cases agriculture is still cited as the main justification for an application for a new essential dwelling in the open countryside. But, in some parts of the country, such as Denbighshire, there has been a rising number of applications relating to forestry (coppicing and charcoal burning) and to 'other' activities. Local authorities which have a higher percentage of 'other' planning applications for essential dwellings are generally also those which, in their planning policies, allow for a wider interpretation of essential over and above agriculture and forestry (para 3.21). For example, of Swansea's applications for essential dwellings between 1999 and 2002, 55% related to agriculture and 45% to 'other'. Equally in Powys 80% related to agriculture and 20% to 'other'. From discussions at the meeting of the Planning Officers Society there was some support from authorities that currently do not have policies for 'other' dwellings to widen the scope of the exception, reflecting the need to support a diverse rural economy.
- 4.9. It is the view of the Farmers' Union of Wales that the increasing emphasis on farm diversification, with farmers drawing on a range of income sources, has made it more difficult for farmers to meet the functional and financial tests required for essential dwellings in the open countryside. It is their view that much of the guidance on which TAN (W) 6 is based is outdated and fails to recognise the importance of diversified activities in rural areas. This view is strongly supported by the NFU Cymru who note that the functional test and timescale test (which states that the enterprise must have been viable for three years) are no longer relevant and go against the Government's emphasis of encouraging a diversified farm economy.

Review of planning files

- 4.10. As noted in Chapter 1, part of the research has included a review of 28 planning files relating to new essential dwelling applications across the nine sample local authorities, for the three years 1999-2003. These files were randomly selected and represent roughly 10% of the total number of applications for essential dwellings in Wales over the given time period.
- 4.11. Amongst the sample, 86% of applications related to an existing agricultural enterprise and only 14% to a bareland plot. Furthermore, when the sample lpas were re-contacted for other examples of applications for essential dwellings relating to bareland plots they were unable to identify any additions. This is potentially surprising given the strong concerns raised by some accessible rural and urban fringe authorities to the pressures created by the lotting up of land for sale. Nonetheless, none of the authorities who raised this as a major issue formed part of the sample. This potentially bears out the observation of lpas that the number of applications for essential dwellings is dropping in response to the more rigorous application of the tests (para 4.4).
- 4.12. Reflecting this basic division between established agricultural holdings and bareland plots, other basic statistics relating to this sample are set out below (**Table 4.2**)

Table 4.2: Characteristics of 28 sample applications for new agricultural dwellings

Size of holding (sample 27)*	
5 hectares or under	4 (15%)
5 – 20 hectares	-
20 – 50 hectares	4 (15%)
50 – 100 hectares	8 (30%)
> 100 hectares	11 (40%)
Nature of enterprise (sample 23)	
Existing agricultural enterprise	20 (87%)
New enterprise on an existing unit	1 (4%)
New enterprise on a new unit	2 (9%)
Type of enterprise (sample 28)	
Agricultural enterprise	25 (89%)*
Intensive agricultural enterprise	1 (4%)
Agricultural contracting	2 (8%)
Equestrian	1 (4%)
Recreation tourism	1 (4%)
Farm shop	1 (4%)
Number of existing dwellings on the holding (sample 25)	
One or more existing dwellings	15 (60%)
An existing mobile home	4 (16%)
Proposal for a replacement dwelling	1 (4%)
No existing dwelling on the holding	5 (20%)
Who the dwelling is for (sample 28)	
Farmer / enterprise manager	15 (54%)
Family member	7 (25%)
Agricultural worker	6 (21%)

* Adds up to more than 100% as some applications include two enterprises

4.13. These general statistics paint a picture of the majority of applications for new essential dwellings within the sample relating to established agricultural holdings, where the need relates to an existing agricultural enterprise, the majority of which (60%) already have a dwelling on the holding, and where 54% of the applications relate to accommodation for the enterprise manager and 25% to another family member. These characteristics are returned to in Chapter 6.

4.14. In turn, the characteristics of the proposed dwellings are as follows (Table 4.3):

Table 4.3: Characteristics of dwellings associated with 28 sample applications

Size of dwelling (sample 13)	
2 bedrooms	3 (23%)
3 bedrooms	5 (38%)
4 bedrooms or over	5 (38%)
Location of dwelling (28)	
Within / close to existing buildings on holding	13 (47%)
Isolated from existing buildings on holding	11 (39%)
Bareland plot	4 (14%)

- 4.15. Of the 28 planning applications, 18 (64%) were outline applications and 10 (36%) were full planning applications. This is an important point which is returned to through the remainder of this report.

Approval rates

- 4.16. In terms of approvals, the average approval rate amongst the sample Lpas, based on the questionnaire returns was 62%, as indicated in **Table 4.4**. Based on the statistics there appears to be no clear geographical pattern in these approval rates. The average approval rate is significantly below the national average for all planning applications but reflects the exceptional nature of this concession in planning. Whether this approval rate reflects current guidance in TAN (W) 6 is considered further in Chapter 6.

Table 4.4: Approval rates for applications for new essential dwellings in the open countryside (1999–2002 inclusive)

Lpa	% approved	Total number of applications for new dwellings 1999 – 2002 inclusive
Blaenau Gwent	100%	1
Brecon Beacons	100%	4
Wrexham	75%	10
Powys	70%	28
Bridgend	66%	3
Gwynedd	60%	5
Swansea	55%	11
Denbigshire	50%	6
Pembrokeshire Coast	42%	24

In summary

- 4.17. In summary, the key factors that emerge from this analysis are:
- the main pressure for new essential dwellings in the open countryside currently appears to come from the demand for additional dwellings on established farms, 60% of which already have an established dwelling;
 - the current tests are seen to be controlling the number of applications for new dwellings associated with bareland plots although there remain considerable numbers of such applications in areas such as the Vale;
 - currently there are not a large number of applications for essential dwellings associated with non-agricultural enterprises, although there is strong anticipation that such applications will increase in the future;
 - there are a high percentage of outline applications for essential dwellings (64%).

TRENDS IN PLANNING APPLICATIONS FOR THE REMOVAL OF AGRICULTURAL OCCUPANCY CONDITIONS (AOCs)

Overall numbers

- 4.18. Statistics for the removal of agricultural occupancy conditions are only available from the nine sample local authorities that completed the email questionnaire, as indicated in **Table 4.5**.

Table 4.5: Average number of planning applications per year for the lifting of AOCs (1999-2002 inclusive)

Lpa	Number of applications per year for the lifting of AOCs (1999 – 2002)
Blaenau Gwent	0
Brecon Beacons NPA	0
Gwynedd	0 - 1
Bridgend	1
Swansea	1
Powys	1 - 2
Pembrokeshire Coast NPA	1 - 2
Denbighshire	2
Wrexham	5

- 4.19. The number of planning applications for the removal of agricultural occupancy conditions is clearly significantly less than the number of applications for new agricultural and other essential dwellings, averaging 1 – 2 per local authority per year. From the results of the email questionnaire four lpas felt the number of applications for the removal of agricultural occupancy conditions was increasing (including both Pembrokeshire Coast and Brecon Beacons National Parks) while five lpas felt that the numbers were staying the same. The foot and mouth disease outbreak was identified by Brecon Beacons National Park as one of the factors that has led to increased pressure for the lifting of occupancy conditions as the number of livestock farms decreases. This split is broadly reflected in the results of the telephone discussions.
- 4.20. In the literature Bass (2000)²² suggests that there will continue to be a need for dwellings with agricultural occupancy conditions to serve retired farm workers and their dependants. Nevertheless, it also appears that it is increasingly common for such dwellings to be occupied by those outside agriculture, driven by two trends. On the one hand, the concern was expressed by a number of lpas that past approvals of essential dwellings that could not meet the functional and financial tests, has created a stock of housing where it would be difficult to comply with the occupancy condition if strictly enforced, unless the occupier worked in agriculture on another holding or is retired from agriculture. On the other hand, as identified through the estate agent survey, there is an increasing trend for tied dwellings to be purchased by those unable to meet the occupancy condition.

²² Bass D (2000) 'Agricultural Dwellings: The Functional and Financial Tests, *Planning Inspectorate Journal*, Issue 21, Autumn

- 4.21. The Inspectorate too, has identified that many of the applications for the lifting of AOCs involve properties that are so large that they are outside the range of most people, let alone rural workers, even after discounting.
- 4.22. There is also the view amongst consultees that farm diversification will make it increasingly difficult for some farmers to conform with the occupancy condition in the future.
- 4.23. If there continues to be a lack of enforcement (Chapter 5) against those living in breach of occupancy conditions these factors are likely to continue. Whether this will result in increased applications for the lifting of occupancy conditions remains to be seen, although the likely consequence will be a significant increase in the number of applications for a Certificate of Lawfulness (see below).

Review of planning files

- 4.24. Across the sample local authorities, a total of 12 planning files relating to applications for the removal of occupancy conditions have been examined. Again, these files were randomly selected and represents roughly 20% - 30% of the total number of applications for the removal of essential dwellings in Wales over the given time period. This examination indicates that within the sample:
- 60% of the applications for the removal of AOCs were on holdings of five hectares or less, potentially confirming the view of Ipas that such applications often relate to properties where it would be very difficult to meet the occupancy condition on that holding;
 - 56% of the applications for the removal of AOCs were on holdings that have one or more other dwellings.

Approval rates

- 4.25. In terms of approvals, the average approval rate amongst the sample Ipas for the removal of AOCs, based on the questionnaire returns, was 70% (**Table 4.6**). These approval rates are considered further in Chapter 7.

Table 4.6: Approval rates for applications for the lifting of AOCs (1999–2002 inclusive)

Lpa	% approved	Total number of applications for the lifting of AOCs 1999 – 2002 inclusive
Blaenau Gwent	-	0
Brecon Beacons	-	0
Gwynedd	100%	1
Pembrokeshire Coast	100%	5
Wrexham	80%	15
Bridgend	66%	3
Denbigshire	50%	6
Powys	40%	4
Swansea	33%	3

CERTIFICATES OF LAWFULNESS

- 4.26. No national data has been collected on the number of applications for Certificates of Lawfulness of an Existing Use relating to people who have been in breach of an agricultural occupancy condition for more than 10 years. However, a number of Ipas reported that they are receiving an increasing number of such applications as a result of a lack of enforcement of occupancy conditions (although this is not a view shared across all local authorities). The Vale of Glamorgan, for example, estimates receiving between 30 and 50 such applications per year.
- 4.27. Review of a sample of nine applications for Certificates of Lawfulness where there has been a breach of the occupancy condition for at least 10 years, indicates that such applications relate to:
- situations where either the current occupant or the current occupant with previous occupants have been in breach of the AOC for 10 years or more (in some cases this may be up to four previous occupants);
 - situations where the breach has been by the original applicant and the subsequent purchaser
- 4.28. The vast majority of these certificates are granted (see Chapter 7). Once a Certificate has been granted such properties at sale will be marketed without their occupancy condition and will be expected to reach open market values, although the occupancy condition remains in place (para. 7.16).

In summary

- 4.29. Factors that are relevant to future policy on essential dwellings in the open countryside are:
- currently the number of applications for the removal of occupancy conditions is significantly less than the number of applications for new essential dwellings;
 - but it is thought that a considerable number of people are living in breach of their occupancy condition either because they no longer (or never did) work in agriculture, or because of farm diversification. The latter is seen as a growing trend for the future;
 - if occupants have lived in breach of an occupancy for over ten years, they can apply for a Certificate of Lawfulness which will normally be approved;
 - with the lifting of an occupancy condition or the granting of a Certificate of Lawfulness the dwelling is able to achieve its full market value at sale and is removed from the stock of dwellings available at a discounted price to the local farming community.

5. THE PROCESS FOR DETERMINING PLANNING APPLICATIONS FOR ESSENTIAL DWELLINGS

- 5.1. This Chapter considers how current applications relating to essential dwellings in the open countryside are made by the applicant and considered by the lpa, based on the results of :
- the review of case files
 - interviews with development control and enforcement officers within the nine sample lpas.

APPLICATIONS FOR NEW ESSENTIAL DWELLINGS IN THE OPEN COUNTRYSIDE

Making an application

- 5.2. The case files indicate that amongst the sample examined (28), the majority of applications for a new essential dwelling were made either by the applicant's agent or architect, with the applicant making the application in only 13% of cases. Despite this relatively high level of professional input, while 82% of applicants submitted some information to justify the functional need, only 21% submitted information to assist in assessing the financial viability of the unit. In 18% of cases no supporting information was submitted with the planning application for a new essential dwelling. Where some form of supporting information was submitted this most commonly took the form of a short report (52% of cases) or a letter (35% of cases). In some cases the letter or report was supported by supplementary information, such as copies of farm accounts. In a few cases these were provided without a supporting report or letter.
- 5.3. TAN (W) 6 (paragraphs 57 and 58) suggests that in most cases the lpa should be able to determine essential dwelling applications on "*their experience and the information provided by the applicant and any other interested parties*". Clearly in 18% of cases no information is provided (or it was lost from the planning files). In only a very few cases was there a detailed assessment by the applicant against the five tests set out in TAN (W) 6 (see **Box 5.1**). This inevitably puts considerable onus on the planning authority to assess whether the proposals meet the tests set out in TAN (W) 6.

Processes followed by the lpa

- 5.4. **Pre application discussions:** Most of the sample lpas encourage pre-application discussions for essential dwellings, although in one or two cases this has stopped as the weight of enquiries from potential applicants (for all types of planning application) was severely hampering the ability of the lpa to undertake core business. In some cases lpas employ a consultant to fulfil this advisory role. Yet preliminary discussions are an essential part of good development control service delivery.

TAN (W) 6 (41) – The five tests for essential dwellings in the open countryside

- (a) there is a clearly established *existing* functional need;
- (b) 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;
- (c) 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;
- (d) the functional need could not be fulfilled by another dwelling already on the unit, or any other existing accommodation in the area which is suitable and available for occupation by the workers concerned; and
- (e) other normal planning requirements, for example on siting and access, are satisfied.

- 5.5. **Outline planning applications:** In the 1995 report *Planning Controls over Agricultural and Forestry Development and Rural Building Conversion* it was noted that “*against the increasing trend towards full planning applications for most forms of development, agricultural dwellings frequently start as an outline application to test the principle of development, at which stage the relevant tests are applied. However, when reserved matters are subsequently approved the relevant tests are .. not repeated and permission may be granted for a unit which is no longer viable or where there is no longer a functional need. In some cases the agricultural land may have been sold away..... Some local authorities seek to address this potential problem by limiting the life of the outline planning permission to say, six months*” (see also para 3.28).
- 5.6. From this current research it is clear that the majority of such applications continue to start as outline applications (para 4.15), often encouraged by the lpa. This approach clearly has merits in limiting costs for the applicant. It should also be noted that none of the concerns raised in the 1995 report (such as the sale of land away from the dwelling site) were evident through the research, although the potential for these circumstances need to be borne in mind.
- 5.7. **Lpa guidance:** None of the sample lpas had any internal guidance for officers on how to apply the TAN (W) 6 tests (other than their local plan/UDP policies). This is not surprising given the very small number of such applications relative to the total number of applications received by lpas per year. Yet it is potentially an issue as the tests can be open to a wide range of interpretations, as examined in the next Chapter. This problem is exacerbated by the lack of any up to date national guidance on how to undertake the tests, especially the financial test. In the early 1990s, following the production of PPG7 (1992), MAFF (WOAD) produced a financial test methodology which was sent to all lpas, although it was made clear that the methodology was not prescriptive and that lpas and private consultants were at liberty to devise suitable alternatives. Since this time no further guidance has been produced, nor have the tests been covered in the *Farmers’ Guide to the Planning System* (WAG, 2003).

5.8. **Lpa assessment against the five tests:** Until the early 1990s, ADAS undertook agricultural appraisals of agricultural development proposals on behalf of lpas. Since this time lpas have been required to put their own mechanisms in place to assess whether the five tests in TAN (W) 6 will be met. These mechanisms now take a variety of forms, involving one or more of the following:

- reliance on in-house planning staff where they have experience in this area and/or have a farming background – some lpa staff who deal with these applications have dealt with them throughout their career often within a number of different lpas across England and Wales. These staff will follow the guidance in TAN (W) 6 using standard texts, such as the NIX pocket book²³;
- requiring the applicant to complete a detailed questionnaire covering factors such as stocking levels and man hours, and requesting information on the existing dwellings on the holding. This information and any other supporting information provided by the applicant is then assessed against the five tests by the lpa or sometimes by an independent advisor / consultant appointed by the lpa (see below);
- requiring the applicant to submit a full independent appraisal with their application, paid for by the applicant. In these cases the lpa may specify the consultant, may provide the applicant with a select list of consultants, or may leave the choice up to the applicant. As a variation on this approach, some lpas will appoint the consultant to undertake an independent appraisal but will require the applicant to pay for this. In all cases these appraisals will then be reviewed by lpa planning officers against their local plan policies;
- where applicants have appointed their own consultants to submit an independent appraisal without the advice of lpa staff, the lpa may appoint their own consultant (who may be under a term commission with the lpa) to review the information presented. To keep costs down this will often be a desk-based assessment using the information provided with the application;
- as a further variation, where the applicant has failed to submit any financial information, a consultant (again who may be under a term commission with the lpa) may be required to view the farm accounts and submit an independent appraisal of financial viability based on these accounts;
- national park authorities may have a service level agreement with county authorities for the county land agent to undertake a review of information submitted with applications for essential dwellings.

5.9. From the responses from lpas, it appears that relatively few follow a consistent approach with most responding to the nature of individual applications, although where lpas have a standard questionnaire the lpa will nearly always require that this is completed. The point was made by a number of lpas that the need to determine planning applications within an eight week period will often restrict their ability to commission an independent appraisal.

²³ John Nix *The Farm Management Pocket Book* The Imperial College London, Wye Campus. Annual Edition

- 5.10. The range of approaches identified above is confirmed by the review of case files. Across the 28 cases reviewed, 15 (54%) had clearly had some form of assessment made of the information submitted by the applicant, although significantly in 13 cases (34%) no further assessment was evident from the case files. In the 15 cases where an independent assessment had been made, the prime focus was on assessing the functional need (**Table 5.1**).

Table 5.1: Factors covered in independent assessments undertaken by or on behalf of the lpa

Functional need	Financial test	Other factors relating to the tests
12 (80%)	8 (53%)	9 (53%)

In the 15 cases where an independent assessment had been made this was most commonly undertaken by an outside advisor (8 or 53%) or by the planning officer (6 or 40%), with one having been appraised by the County Land Agent.

- 5.11. **Other factors taken into account:** The only additional factor noted by one lpa as important in determining such applications, was information on how many farm workers currently live off the farm in cases of an application for a second dwelling.

Determination of applications for new essential dwellings in the open countryside

- 5.12. **Delegation of decisions:** In four out of the nine lpas consulted, applications for essential dwellings in the open countryside always go to committee for determination, while in the remaining five lpas these applications will be determined under delegated powers unless:

- objections are received;
- a member requests that the application goes before committee;
- it is a departure from the development plan; or
- the decision is marginal.

In these cases the application is referred to committee.

- 5.13. In the view of lpa officers, committees are more likely to take personal circumstances into account (potentially approving applications recommended for refusal). It was noted though, that in urban fringe and accessible rural locations the links between the farming community and committee members are now reduced.
- 5.14. Again, the overall split between delegated and committee decisions is confirmed by the analysis of case files with 57% of applications reviewed determined by committee and 43% determined under delegated powers. Of the 16 that went to committee two were approved contrary to officer recommendation.
- 5.15. **Reasons for refusal:** Lpa officers confirmed that the main reasons for refusal related to:

- lack of a functional need;

- failure to meet the financial test;
- visual intrusion with many applicants preferring an isolated location with good views;
- other dwellings on the farm that can satisfy the functional need;
- unacceptable design.

5.16. **Time taken to determine applications:** The time taken to appraise these applications (para 5.9) means that few are determined within 8 weeks. From the appraisal of case files only two out of the 28 applications reviewed were determined within the eight week period.

Table 5.2: Time taken to determine applications for essential dwellings (sample 28)

< 8 weeks	8 – 12 weeks	12 – 16 weeks	16 - -24 weeks	>24 weeks
2 (7%)	5 (18%)	6 (21%)	11 (39%)	4 (14%)

Use of conditions and section 106 agreements

5.17. **Occupancy conditions:** TAN (W) 6 advises that all approvals for a new essential dwelling should have an occupancy condition to retain the dwelling to fulfil its functional need. Amongst the case files all approved essential dwellings (20) had an occupancy condition imposed.

5.18. The wording of these occupancy conditions varies slightly. Some refer to “solely or mainly working in agriculture or forestry”, and some to “solely or mainly employed in agriculture or forestry”. The one exception was a proposed barn conversion to residential accommodation to be occupied by the farmer’s son. This was determined under the policy for building re-use rather than that for an essential dwelling and the occupancy condition imposed related to local needs rather than agricultural occupancy:

“The house shall not be occupied other than as the sole residence of a local person together with members of the family of such local person residing with him or continuing to use the property as the only or main residence following the death of such local person. For the purpose of this clause local person shall mean one who lived or worked in the former District of Dwyfor immediately prior to local government re-organization on 1st April 1996.....or within 10 miles of the Red Land [the farm] for a continuous period of three years immediately before taking possession of the said property or within 10 miles of the Red Land for a continuous period of three years immediately before retiring”.

5.19. In the case of occupancy conditions for non-farm enterprises, the occupancy condition was usually specific to that enterprise. For example, in the case of a new house for the manager of a caravan park, the occupancy condition was:

“To limit the use of the House to the Manager of the Caravan Park and his or her family and for no other purpose whatsoever”.

5.20. **Other conditions:** In addition to occupancy conditions, TAN (W) 6 also advises on other specific conditions that might be considered for essential dwellings (**Table**

5.3). Amongst the sample lpas, however, it appears that the majority of these possible conditions or use of Section 106 agreements are rarely used. The exceptions are:

- tying the sale of the dwelling to adjacent buildings is sometimes included as a condition by one lpa;
- four lpas will always or nearly always impose a Section 106 agreement tying the dwelling to the land of the farm (this includes the two national park authorities in the sample);
- three lpas will usually specify through condition that other buildings associated with a new enterprise should be constructed before the dwelling is provided – this may relate to a temporary consent; and
- one authority occasionally removes permitted development rights.

5.21. This pattern is broadly confirmed by the review of case files (**Table 5.3**).

Table 5.3: Use of conditions and Section 106 agreements (sample 20 approved applications)

	Condition	Section 106
Occupancy condition (1)	15 (75%)	-
Occupancy of other dwellings on the holding (2)	-	-
Tying sale of dwelling to adjacent buildings (3)	1 (5%)	-
Tying sale of dwelling to adjacent land (3)	-	6 (30%)
To be built within 1-2 years (para 5.5 above)	1 (5%)	
Removal of Part 1/2 Permitted Development Rights (4)	2 (10%)	1 (5%)
Work on justifying enterprise to be completed first	-	-
External appearance	12 (60%)	1 (5%)
Limiting the size of the dwelling	2 (10%)	-

References within TAN (W) 6

(1) TAN (W) 6 (53) Dwellings approved for agricultural or forestry workers should be the subject of an occupancy condition, to retain the dwelling to fulfill its identified function.

(2) TAN (W) 6 (55) There may also be scope for imposing an occupancy condition on other existing dwellings on the farm, to help protect pressure on the countryside for new dwellings.

(3) TAN (W) 6 (55) LPAs may also 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 without further application to the authority.

(4) TAN (W) 6 (48) In certain cases it may be appropriate through condition to remove certain permitted development rights so that the size and character of the dwelling continues to reflect its functional purpose.

5.22. In addition, a number of lpas seek to limit the size of the dwelling through condition, a point that is returned to in Chapter 6.

In summary

- 5.23. In summary, factors that are relevant to the future development of policy for essential dwellings are:
- current applications for new essential dwellings appear to be nearly always assessed against the functional test but the application of the financial test is more patchy - in only 18% of cases is supporting financial information made available;
 - Ipas do not have any internal guidance on the operation of the tests set out in TAN (W) 6 (including the functional and financial test) and rely on officer experience or the experience of appointed consultants;
 - methods of assessing applications for new essential dwellings vary considerably across Ipas;
 - occupancy conditions are applied to all new essential dwellings but these are rarely monitored (see below).

ENFORCEMENT OF AGRICULTURAL OCCUPANCY CONDITIONS

- 5.24. From this research it is clear that there is little monitoring of agricultural or other occupancy conditions. Of the 19 Ipas initially consulted, only three had an up to date list of dwellings with agricultural or similar occupancy conditions. If there is no record of these dwellings then the occupancy condition cannot be monitored. Yet if there is little enforcement there is strong encouragement for those outside agriculture to purchase such properties in anticipation of applying for a Certificate of Lawfulness once a 10-year breach of the condition has elapsed.
- 5.25. From the consultations with the nine sample Ipas, this picture was confirmed. The majority do not have the resources to identify those properties with occupancy conditions from their computer records. In only two cases is regular monitoring undertaken / proposed and in one other case it had been proposed but had not been taken forward because of objection from members.
- 5.26. Of the two where regular monitoring is undertaken /proposed a letter is/will be sent to the occupiers of restricted dwellings to ensure that they are not in breach of their occupancy condition. In cases of breach enforcement action has / will be taken.

APPLICATIONS FOR THE LIFTING OF AGRICULTURAL OCCUPANCY CONDITIONS

General practice

- 5.27. Under the guidance in TAN (W) 6, where an occupancy condition can no longer be fulfilled, it is noted that the property should not be kept vacant and that the removal of the condition should be considered on the basis of a realistic assessment of need.
- 5.28. From interviews, Ipas confirmed that they will always investigate the validity of an application for the lifting of an AOC. These investigations can include one or more of the following:

- investigation of the current occupation of the property;
 - investigation of local demand for restricted dwellings through discussions with agricultural consultants;
 - marketing of the property for at least six months at a price affordable to an agricultural worker – confirmed through discussions with the selling agent. This is usually taken to be between 30% and 60% less than the open market value, depending on the size of the property. The price at which the property has been marketed may be checked with the county land agent.
- 5.29. In some cases, Ipas will assess the application more closely if there has been a recent sale of adjoining land owned by the applicant.
- 5.30. From the case files, it is clear that the main method used for assessing agricultural need relates to the marketing of the property. Although it is also instructive that in three cases (25% of the sample) no evidence was provided in support of the application for the removal of an AOC (**Table 5.4**).

Table 5.4: Evidence submitted with applications for the lifting of agricultural occupancy conditions (sample 12)

Type of evidence submitted with the application	
Lack of need on the farm	1 (8%)
Evidence of full marketing of the property	6 (50%)
Evidence of lack of interest from the market	7 (58%)
Evidence that marketed at a discounted price	3 (25%)
No evidence submitted	3 (25%)

- 5.31. Unlike assessments undertaken for applications for new essential dwellings, Ipas rarely use specialist advisors to assess applications for the lifting of agricultural occupancy conditions.

Determination of applications for the lifting of occupancy conditions

- 5.32. **Delegation of decisions:** Within individual Ipas the determination of applications for the lifting of occupancy conditions is usually treated in the same way as applications for new agricultural dwellings (para 5.12) and, from the case files reviewed, the decision normally follows the officer recommendation.
- 5.33. **Reasons for refusal:** Amongst the Ipa officers interviewed, the main reasons for the refusal of applications for the removal of agricultural occupancy conditions were identified as:
- marketing at a price above that which could be afforded by an agricultural worker;
 - insufficient evidence that the condition no longer serves a useful purpose.
- 5.34. **Time taken to determine applications:** Like applications for new agricultural dwellings relatively few are determined within the eight week period (**Table 5.5**)

Table 5.5: Time taken to determine applications for the lifting of AOCs (sample 12)

< 8 weeks	8 – 12 weeks	12 – 16 weeks	16 - -24 weeks	>24 weeks
2 (17%)	3 (25%)	1 (8%)	5 (42%)	1 (8%)

APPLICATIONS FOR CERTIFICATES OF LAWFULNESS (CLEUDs)

General practice

- 5.35. Certificates of Lawfulness for Existing Use or Development (CLEUDs) lie outside planning policy, being applications for the lawful use of a property, of the nine sampled through the review of case files, eight (89%) were granted and one was withdrawn. None, therefore, were refused.
- 5.36. In the majority of cases, planning officers deal with the analysis of the application and then pass the file, with the preliminary conclusions, to the local authority legal team for verification and approval. There is no need to consult and two-thirds of the applications reviewed were determined within eight weeks.

Advice / analysis

- 5.37. In the majority of cases the application for a CLEUD is determined on the basis of evidence contained with the application, or supplementary evidence requested during processing. Few authorities seek to validate the evidence by way of third party confirmation.
- 5.38. Statutory declarations are often provided with the applications, although in many cases only letters are submitted. It is an offence to mislead on a statutory declaration, thus the evidence submitted in this ways should carry more weight.

In summary

- 5.39. In summary, factors that are relevant to the future development of policy for essential dwellings are:
- tests applied to assess whether an occupancy condition should be lifted are generally less onerous than those applied to an application for a new essential dwelling, and generally relate to the marketing of the property at a discounted price;
 - application for a CLEUD is a legal process and therefore lies outside planning Policy. Guidance is provided in extant Welsh Office Circular 24/97 “ Enforcing Planning Control: Legislative Provisions and Procedural Requirements” (“Index of Planning Guidance for Wales” WAG October 2002)

6. ANALYSIS OF APPLICATIONS FOR NEW ESSENTIAL DWELLINGS

- 6.1. This Chapter looks more specifically at applications for new essential dwellings and the issues that they raise. It is based on an analysis of 25 case files and their conformity with policy, and the results of 14 case studies (drawn from the sample of 25) which involved detailed interviews with the applicant to explore the claimed agricultural need and the social and economic factors which had influenced the application (para 1.20). This analysis has been essential to ensure that evidence collected through this research is clearly grounded in reality. The case studies, by their very nature, must remain confidential but the conclusions that can be drawn are included in this Chapter.
- 6.2. Reflecting the broader policy context, this review has considered both the operation of the tests in TAN (W) 6 and then goes on to consider issues relating to:
- trends in rural house prices, the lack of affordable housing, and the implications that these have for rural communities and family farming;
 - the implications of farm diversification, particularly in relation to the functional and financial tests.

The sample (25 case files)

- 6.3. The 25 case files examined in detail relate to 23 enterprises. These reflected a range of farm and enterprise sizes, but (unsurprisingly) with a predominance of livestock units (see also paras 4.12-4.13).

Tables 6.1: Synopsis of case files studied (sample 25)

Ref	Location (1)	Farm type	Size (ha)	Existing dwellings on the holding	Lpa decision (2)
14	Urban fringe	Sheep and horses	34	Mobile home	A
15	Urban fringe	Arable, cattle and sheep	113	One	R
16	Urban fringe	Horses	28	One	R
21	Urban fringe	Cattle, sheep and pigs	136	One	A
22	Urban fringe	Sheep	73	Two	R
9	Accessible rural	Dairy	87	One	A
20	Accessible rural	Cattle, sheep and contracting	71	Replacement	A
40	Accessible rural	Dairy	5	One	A
1	Remote rural	Cattle and sheep	401	One	A
2	Remote rural	Cattle and sheep	397	Two (3)	A on Appeal
3	Remote rural	Cattle and sheep	113	One	R/A
4/5	Remote rural	Cattle and sheep	344	One	A
6/7	Remote rural	Calves and contracting	3	None	A
8	Remote rural	Cattle and sheep	293	One	A
10	Remote rural	Caravan park	-	None	A
12	Remote rural	Cattle and sheep	86	Mobile Home	A
13	Remote rural	Proposed dairy	328	One (4)	A
17	Remote rural	Arable, cattle and sheep	162	One	R

Ref	Location (1)	Farm type	Size (ha)	Existing dwellings on the holding	Lpa decision (2)
18	Remote rural	Horticulture	5	Mobile home	A
19	Remote rural	Arable, cattle and sheep	141	One (5)	A
23	Remote rural	Unstocked	34	None	A
24	Remote rural	Cattle and sheep	71	One	A
39	Remote rural	Unstocked	3	None	R

(1) In Wales there is no established classification of rural areas.- although the 9 counties are generally used and Assembly Government Secondary legislation eg RTB (2003 SIs 54 and 1147) includes a Schedule of rural communities based on population density. In this assessment 'urban fringe' areas are taken to be those areas on the fringes of Cardiff, Swansea, Newport and the A55 corridor in NE Wales; 'accessible rural' areas are those within easy commuting distance of the main population centres; and 'remote rural' areas are the majority of Wales covering central and western Wales.

(2) Decision: A = Approved; R = Refused.

(3) 2 units run together by two brothers. One brother runs a haulage business from one unit with associated dwelling. The other brother lives in a new dwelling on other unit – original farmhouse demolished.

(4) The original farm unit with dwelling was enlarged by purchase of a second unit from which the dwelling was sold away at the time of sale.

(5) The proposed second dwelling for a farm worker was a conversion of an existing barn.

- 6.4. As noted in Chapter 4, some two thirds of the sample, related to second (or more) dwellings on established enterprises. Many of these were approved.

Table 6.2: Summary of applications relative to existing dwellings on the holding (sample 25)

Type	Number	Percentage of total	Percentage approved
First dwelling, established enterprise	2	9%	50%
Second (or further) dwelling	15	65%	66%
Dwelling to replace mobile home	3	13%	100%
First dwelling, new enterprise	2	9%	50%
Replacement house	1	4%	100%

ANALYSIS OF COMPLIANCE WITH CURRENT POLICY (TAN (W) 6)

- 6.5. The first stage of analysis has involved an independent assessment of the extent to which the 25 applications accord with the criteria (tests) set out in TAN (W) 6. This has been undertaken, not to question the decisions of the lpas, but to throw light on the issues at stake.
- 6.6. This independent assessment has necessarily been desk-based. However, many of the assessments carried out by consultants on behalf of lpas are also desk-based, because of the need to contain costs - this is therefore appropriate for assessing conformity with the tests, although not for assessing siting and design relative to landscape impact.
- 6.7. In analysing the applications the following assessment thresholds or techniques have been applied:

- The *functional need* has been assessed in terms of the number of workers who it is essential are resident on site “for the proper functioning of the enterprise” (TAN (W) 6, 42).
- In assessing conformity with the *financial test*, the focus has been on whether sufficient financial data was presented (eg three years of accounts) with the application or subsequently submitted to allow the financial viability of the enterprise to be assessed. It has not been possible to undertake a more detailed analysis of financial performance as, understandably, in a considerable number of cases no financial information is held on the public records. The financial data may have been assessed at the time of the application at the farm although, in such cases, there should be some record of the conclusions on the case file.
- Siting has only been assessed in terms of meeting the functional need, with an anticipation that if there is a functional need, the dwelling provided to fulfil this need should be within 100m of the justifying enterprise / buildings. No evaluation has been made of landscape impact which would also be a material consideration.

6.8. The results of this analysis are shown in **Table 6.3**. In this analysis each application must satisfy all five tests from TAN (W) 6 paragraph 41 to receive the ‘consultants view’ of ‘Pass’.

Table 6.3: Summary of consultants’ analysis of applications for new essential dwellings (25 case files)

Ref	The five tests of TAN (W) 6					Consultants’ assessment	Lpa decision
	Existing functional need? (1)	Existing full time workers ? (2)	Financial test (Information available)? (3)	Could other dwellings meet the need? (4)	Is siting acceptable? (5)		
1	2	2	Yes	No	Poor	Marginal	A
2	2	3	Partial	Yes	Poor	Fail	A
3	1	2	Yes	Yes	Good	Fail	R/A
4/5	1	2	No	Yes	Poor	Fail	A
6/7	None	0.5	No	-	Good	Fail	A
8	1	3	Yes	Yes	Poor	Fail	A
9	1	2	No	Yes	Good	Fail	A
10	Marginal	1	No	-	Good	Fail	A
12	1	1.5	No	-	Good	Fail	A
13	1	2	Budgets	Yes	Good	Fail	A
14	Marginal	1	Yes	No	Good	Fail	A
15	1	2	No	Yes	V. Good	Fail	R
16	1	1	No	Yes	Good	Fail	R
17	1	3	No	Yes	Poor	Fail	R
18	1	2	Yes	No	Good	Pass	A
19	1	2	No data	Yes	Good	- (6)	A
20	Marginal	1	Accounts	No	Poor	Marginal	A
21	1	2	Accounts	Yes	Good	Fail	A
22	1	1	No data	Yes, two	Poor	Fail	R
23	None	None	No data	-	Good	Fail	A
24	1	2	No data	Yes	Good	Fail	A

39	None	None	No data	-	-	Fail	R
40	1	3	Accounts	Yes	Poor	Fail	A

(1) Is there a clearly established functional need? The table notes the number of people required to meet the functional need.

(2) Does this need relate to a full-time worker? The table notes the number of full-time workers needed to run the enterprise (but who do not necessarily need to live on site).

(3) That the unit is financially sound and has a clear prospect of remaining so? The table indicates whether there is clear evidence that the financial test was applied.

(4) That the functional need could not be fulfilled by another dwelling already on the unit? The table indicates if there is another dwelling that could fulfil the functional need. (-) = No functional need identified. No = There is no existing dwelling to serve the functional need

(5) The siting of the dwelling and other standard planning considerations. The table indicates whether the proposed dwelling is well located to meet the identified functional need ie it is within 150m of the enterprise generating the functional need

(6) This was a barn conversion for which there was no existing functional need but was proposed to attract a farm worker when the business expanded. As a barn conversion it is questionable whether it needed to fulfill the TAN (W) 6 tests.

6.9. The results of this desk analysis reveal that only one application in the sample met all the tests and a further two were marginal, yet 17 out of the 23 had been approved (one on appeal). In this analysis the primary reason for the failure of applications to meet the TAN (W) 6 tests was the presence of an existing dwelling on the site already able to meet the functional test (14 applications or 60% of the sample) with a further six applications (26%) with only a marginal or no functional need. Another concern was the apparent lack of financial analysis (see also **Table 6.4**).

6.10. These issues have been taken into the analysis of the 14 case studies which have, in turn, revealed various apparent failings in the interpretation of the five tests set out in TAN (W) 6, by applicants, their agents, and by the Ips. Each test is therefore considered in turn and potential revised wording suggested for TAN (W) 6 to address the specific issue raised. **However, this revised wording must be seen within the context of the more general discussion and recommendations included in Chapter 8.**

The Functional Test (TAN (W) 6 41(a))

6.11. Paragraph 41(a) of TAN (W) 6 needs to be read in conjunction with paragraph 42. The purpose of the test is to ensure, so far as possible, that it is “*essential for the proper functioning of the enterprise for one or more workers to be readily available at most times*”. Some examples are given of the situations which might give rise to a need for a worker to live on site, such as “*in case animals or agricultural processes require essential care at short notice*” or “*to deal quickly with emergencies that could otherwise cause serious loss of crops or products*”.

6.12. The functional test is the most important test. If there is no need for a resident worker for the proper functioning of the enterprise, then even if it is a full-time and viable business, a new dwelling cannot be justified. The functional test is also the most difficult one to judge. It requires an evaluation of the degree of risk of unexpected problems occurring, their frequency, the severity of suffering or loss if they are not identified and dealt with, and the extent to which a resident worker would actually be able to identify and deal with a problem. It relates primarily to

- emergency situations or where animals or processes need essential care at short notice.
- 6.13. Such activities are those which cannot easily be predicted in advance. They are not to be confused with routine tasks. Hence if a dairy farm, for example, needs a stockman or stockmen *working* on the farm from 5am to 12 noon and 3pm to 6pm and a check at 11pm, these are routine and predictable tasks. It would be similar to, say, running a public house. An essential need to live on site would not be to deal with these activities but rather to deal with emergencies or unexpected activities, such as calving or a cast cow or calves escaping, outside the hours of work when the stockman would be there anyway.
- 6.14. In general, it appears that the case studies have been assessed in this way, judging by the functional analysis undertaken by agents, advisors to the Ipas, and Ipa officers. But two significant common errors do occur:
- few applications for second dwellings are analysed in terms of why it is essential for two workers to be resident. Explanations were given of out-of-hours functional needs, such as calving, but not as to why these give rise to the need for two workers rather than just one to be resident on the farm;
 - there is a tendency to fuse the functional assessment with an analysis of the number of full-time workers needed on the holding. For example, it might be calculated that a farm gives rise to a labour need of say 550 standard man days (8 hour equivalent), and a stockman with overtime is able to provide 275 Standard Man Days. However, it does not mean that of the resultant need for 2 workers, both must necessarily live on site.
- 6.15. There is little analysis of whether or not the functional need could be met by the existing worker, or whether that worker (eg. due to age or incapacity) is incapable of carrying out emergency work. This applied in particular to second dwelling applications.
- 6.16. It was suggested by some consultees that the functional test is “*outdated*”. This may be so in terms of the need to encompass diversification and to widen the scope to enable other enterprises for which a rural location is essential (considered separately at the end of this Chapter). However, there is no evidence to suggest that genuine cases of need are being prevented from gaining permission by the current functional test. Indeed, the evidence suggests the opposite – many cases where the functional need for a dwelling is not essential, are being permitted.
- 6.17. This analysis leads to the following initial conclusions (considered further in Chapter 8):
- if the functional test remains, there is a need for clearer guidance to ensure that the evaluation focuses on how many workers need to live on the farm (rather than in the area) to meet the functional need;
 - there needs to be clarification that the identified number of workers is not the same as the number of workers needed to live on the farm.

6.18. If the current guidance were to be continued, therefore, it could be amended as follows (based on TAN (W) 6 paragraphs 41(a), 42, and 45):

41(a) *there is a clearly established existing functional need for the worker for whom the dwelling is proposed, to live on site (see paragraph x for further details of the functional test). If there are existing dwelling(s) on the unit then the need for additional workers to live on the site for the proper functioning of the enterprise must be demonstrated to be essential;*

X *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. It should relate to unexpected situations that might arise, for which workers are needed to be on hand outside of normal working hours for the particular enterprise. Such requirements might arise, for example, if workers are needed to be on hand night and day to deal with an emergency that would threaten the continued viability and existence of the enterprise without immediate attention.*

6.19. The above wording also takes account of the implications of diversified enterprises, in that it does not relate the functional need only to farm enterprises. The importance of farm diversification is picked up at the end of this Chapter and in Chapter 8.

The Full-time Test (TAN (W) 6 41(b))

6.20. In many cases there was no separate analysis of the test 41(b) – “the [functional] need relates to a full-time worker, or one who is primarily employed in agriculture”. Many consultants stuck with a functional and financial test, carrying forward the previous PPG7 (1992) Annex E two part test. In one application made after 2000 the agent specifically referred to guidance from Annex E which had been superseded by TAN (W) 6.

6.21. Where a ‘full-time’ test was undertaken, it was usually done by reference to standard labour budgeting techniques from farm business management budget books. Such an approach is generally acceptable and accurate, although the effect of seasonal variations in workloads may on occasion affect the conclusion.

6.22. NFU Cymru believes that the full-time test is no longer applicable at a time of farm diversification. Instead they suggest that the labour threshold for the activity for which there is an essential need should be reduced to 550 hours, with the remainder being in local (potentially off-farm) businesses. Certainly there is a case for amending the current wording of the test, which requires full-time and primary employment *in agriculture*, to reflect the broader range of enterprises for which a new dwelling might be permitted (considered at the end of this Chapter).

6.23. However, there is no evidence to suggest that the full-time test being applied to new dwelling applications is outdated. There may be a different case for existing agricultural occupancy restrictions (considered further in Chapters 7 and 8), but not for new dwellings. New dwellings for well established and viable businesses where the resident must be readily available at most times, ought only be allowed where the worker will be fully or primarily employed or working on the enterprise.

6.24. This analysis leads to the following initial conclusions, considered further in Chapter 8:

- the purpose of the full-time test requires clarification noting that it relates to the worker fulfilling the functional test and is separate to the assessment of the number of workers needed for the enterprise as a whole;
 - the effect of seasonal peaks and troughs may be an influence and the guidance needs to clarify this point.
- 6.25. If the current guidance were to be continued, therefore, it could be amended as follows (based on TAN (W) 6 paragraphs 41(b) and 45:

41(b) *the worker for whom there is a functional need for new accommodation (criterion a above) must be a full-time worker or one primarily employed in the enterprise. It must not relate to a part-time requirement or a requirement that does not relate to the enterprises on site. If this is a second (or further) dwelling, all existing dwellings must also be occupied by full-time workers for whom it is essential that they also remain on site for functional reasons.*

The Financial Test (TAN (W) 6 41(c))

- 6.26. There was considerable variation in the amount of financial data provided in support of applications for new dwellings. In some cases, it was clear that planning officers were referring back to the outdated guidance of PPG7 (1992) Annex E, only requesting financial information in cases where the functional need was not conclusive – this was noted in a number of case studies where the application had been made post the introduction of TAN (W) 6. Problems with the financial test may also relate to ambiguity or a lack of clarity in the guidance itself or the confidentiality of the financial information.
- 6.27. Paragraph 41(c) requires that 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*”. This reflects that few if any businesses (both agricultural and non agricultural) are likely to show a profit within the first three to four years of operation.
- 6.28. That an enterprise has been established for three or more years ought to be a straightforward analysis. Yet in two cases approval was given for a permanent dwelling serving a new enterprise, albeit against officer recommendation. Nevertheless the guidance is clear on this issue.
- 6.29. The level of profitability necessary to satisfy the requirement to have “*been profitable for at least one*” year is not so clear, however. Is it a profit of £1, or the minimum agricultural wage, or does it demand a return on the assets of the unit or business (land, labour and capital)? Different consultants and advisors have different opinions on this. Experience more generally shows three key thresholds applied by those assessing applications for new essential dwellings. The analysis, usually applied to actual Trading and Profit and Loss Accounts, may relate to:
- a) at the lowest level, the minimum agricultural wage (currently £10,540). This is the minimum wage payable to an adult basic-grade farm worker for a standard 39 hour week;

- b) at a higher level, it is the wage payable to somebody for the work involved. For example, if the essential need to live on site relates to a farmer undertaking about 2,000 hours work per annum, and some of that involves weekends and nights, then a threshold of the minimum agricultural wage plus overtime on the extra 200 hours worked would be appropriate;
 - c) finally, at the highest level, it is a return on labour valued at the minimum agricultural wage plus overtime (or average earnings for the type of worker), plus a return on land valued as a rental equivalent, plus a return on capital, being the value of livestock, new buildings and the cost of the house returned at (usually) 2.5%. This was the threshold used by MAFF/ WOAD in their guidance of the early 1990s (para 5.7).
- 6.30. From the case studies, where data is available for scrutiny, it appears that the lower threshold is usually used.
- 6.31. It is striking that there is very little analysis, particularly in the applications for second dwellings, to assess whether the accounts show a profit level to cover all the workers involved. In cases where father, mother and son are all partners and fully employed, the threshold must cover at least three workers plus, if appropriate, the other deductions.
- 6.32. The reason for this lack of analysis is not clear. It may be a lack of understanding about accounts. Limited companies pay directors a salary. Hence, if a limited company shows a profit, it is usually after all labour costs have been taken into account. However, a sole trader's profit level is before his (or her) labour is compensated. A partnership will show a profit before any drawings or labour payments for all of the parties. It is for this reason that the relevant profit level can be quite variable.
- 6.33. From the case studies, it is evident that amongst applicants there is an understandable concern about disclosing personal financial details. One application reviewed stated that financial details were not submitted because it would "*break [the applicant's] right to confidentiality*". Another was appalled when he found that his business accounts had been passed to the community council for all to see. Therein lies a conundrum: whilst this may be the only type of planning application where business performance is open to detailed scrutiny, if accounts are not reviewed, how can the lpa be assured that the business is "*profitable*" and "*viable*" and has "*a clear prospect of remaining so*".
- 6.34. Analysis of the planning application case files shows the following variation in financial details submitted (**Table 6.4**).

Table 6.4: Financial data provided in support of the applications

Ref	Farm type	Application type	Level of financial data submitted	Decision (1)
1	Cattle and sheep	Second dwelling	Two years accounts	A
2	Cattle and sheep	Third dwelling	Profit figure only for three years	A on appeal
3	Cattle and sheep	Second dwelling	Three years accounts – but marginal profits	R/A
4/5	Cattle and sheep	Second dwelling	Agents comments- no data or summary of accounts	A
6/7	Cattle and contracting	First dwelling	None	A
8	Cattle and sheep	Second dwelling	Three years accounts	A
9	Dairy	Second dwelling	Agents statement only	A
10	Caravan park	First dwelling	None	A
12	Cattle and sheep	Replace mobile home	None	A
13	Dairy	Second dwelling	Budgets as not operating	A *
14	Sheep and horses	Replace mobile home	Accounts submitted	A
15	Arable, cattle and sheep	Second dwelling	None	R
16	Equestrian	Second dwelling, replacing mobile home	None	R
17	Arable, cattle and sheep	Second dwelling	None	R
18	Horticulture	Replace mobile home	Accounts submitted	A *
19	Arable, cattle and sheep	Second dwelling as barn conversion	None	A
20	Sheep, cattle and contracting	Replace dilapidated existing house	Accounts submitted	A
21	Cattle, sheep and pigs	Second dwelling	Accounts submitted	A
22	Sheep	Third dwelling	None	R
23	Livestock (but unstocked)	First dwelling	None	A
24	Arable, cattle and sheep	Second dwelling	None	A
39	Unstocked	First dwelling	None	R
40	Dairy	Second dwelling	Accounts submitted	A

(1) Decision: A = Approved; R = Refused * = Approved against officer recommendation

6.35. Some national consultees considered the financial test and time test (three years) to be outdated. The evidence from this research indicates that genuine cases are being approved. When essential dwellings were previously researched between 1992 and

1995²⁴, there was clear evidence of dwellings being permitted for enterprises that then failed to materialise or of dwellings that had been allowed in support of small enterprises that would never financially support the applicant. Indeed, analysis of applications for the lifting of occupancy conditions shows that lack of viability of the enterprise is often cited as the primary justification for the application (Chapter 7). This highlights the need to maintain the financial test to avoid a repeat of past problems, with a new enterprise required to prove itself over a minimum of three years.

- 6.36. Accordingly, the analysis leads to the following initial conclusions, considered further in Chapter 8:
- a financial test needs to be retained;
 - the guidance needs clarification;
 - the need for Ipas to receive and scrutinise proof of financial performance must be stressed;
 - the purpose of the scrutiny needs to be further clarified.
- 6.37. As part of this clarification it will be important to consider which financial threshold should be applied (para 6.29), ie (a) minimum wage; (b) return on labour; or (c) return on land, labour and capital.
- 6.38. The purpose of applying the tests is to ensure that new dwellings are only permitted where they are genuinely needed and where that need has a reasonable prospect of being sustained. In other words, there should be a degree of longevity in the need for the dwelling (which the financial test seeks to assess). Bearing in mind that in Wales the predominant farm type is small family livestock farms, the financial test needs to be realistic and aware of the great fluctuations in farm income experienced over the last ten years. It is therefore considered that the financial test should be based on a threshold reflecting a return on labour (para 6.29 (b)) and not the higher threshold (para 6.29 (c)) proposed by the MAFF /WOAD guidance of the early 1990s (see Box 6.1). It is not suggested that a more stringent test should be applied to bareland plots, as such plots should not be considered for a permanent dwelling. Rather they should be expected to be covered by the temporary dwelling test (TAN (W) 6). The purpose of granting a temporary dwelling for the first three years of a new enterprise is to provide a testing period to reduce the chances of business failure and therefore the loss of justification for any new dwelling.
- 6.39. In some cases, particularly where second dwellings are concerned, farms may be receiving the Single Farm Payment²⁵ as a result of the current CAP reforms. This payment is based on historic subsidy payments and carries with it certain qualifying and cross-compliance criteria. Accordingly the Single Farm Payment represents agriculturally related income and should be included in any assessment of profitability.

²⁴ LUC et al (1995) *Planning Controls over Agricultural and Forestry Development and Rural Building Conversions* DoE, HMSO

²⁵ The Single Farm Payment in Wales has been approved on an historic claims basis. It will not be 'claimable' by new entrants unless they are able to show 'continuation'. A claim must be made in 2005, otherwise entitlements will be lost.

The financial test

Box 6.1

Review of rural businesses in Wales suggests that they are unlikely to meet the upper threshold (para 6.29(c)). By way of illustration, taking a 100 ha farm with 800 ewes, the upper threshold would be as follows:

- return on unpaid labour including overtime, £14,000 at basic non-craftsman's rates;
- return on land, rental equivalent of 100 ha at average say £80 per ha, £8,000;
- return on capital being the mid-life value of livestock plus the cost of the dwelling, 800 ewes at £50 (£40,000) plus cost of dwelling (£80,000) totalling £120,000, returned at 2.5% equals £3,000;
- so that to pass the upper threshold the profit of the farm must be £25,000.

Yet such farm businesses are likely to continue if they are returning a living wage even if they are not providing a return on land and capital. If it were otherwise, there would be few farms still trading. By way of analogy, a self-employed consultant working from home earning £15,000 would reflect on his/her profits at the year-end and decide whether or not to continue trading. They would be unlikely to deduct from the £15,000 a notional rent on the space they occupy in their house plus a return on capital invested, before making their analysis.

Nevertheless, the threshold should be set higher than the minimum adult basic agricultural wage (para 6.29(a)) because, by virtue of the functional test, the operator must be undertaking work outside the standard working week (6.29(b)).

6.40. If the current guidance is continued, therefore, it could be amended as follows (based on TAN (W) 6 paragraphs 41(c) and 46):

41(c) *the unit and the activity concerned must be established and have been operated by the applicant for at least three years and have been profitable for at least one of those years. It should be financially sound and should have reasonable prospects of remaining economically sustainable for a reasonable period of time. Evidence of actual economic performance will be required to assess profitability. To assess economic sustainability it will be necessary to show the business has a reasonable prospect of continuing to provide a market return for all operators for the amount of management and manual labour put in. See paragraph Y for further details;*

Y *A financial test is necessary to assess whether the unit overall has the potential to continue. It will be necessary to show that the unit can provide a realistic return to the operator for all the labour input. This should be assessed on the basis of what is a realistic income for the skills of the operator. A financial test is also necessary to assess the size of dwelling which the unit can afford to build and maintain.*

The Other Dwellings Test (TAN (W) 6 41(d))

6.41. It is clear from the analysis in **Tables 6.1 – 6.4** above, that many of the applications reviewed relate to second dwellings on a unit. TAN (W) 6 41(d) asks whether the functional need could be met by another dwelling already on the holding. Therefore to justify a second dwelling there must be a functional need for two people to be resident on the farm. The extent to which applications assessed the functional need for two workers has already been explored.

- 6.42. The guidance in TAN (W) 6 paragraph 43 is that it may also be necessary in some cases to investigate whether or not dwellings have been sold off in recent years, with a recent sale seen as an indication that a new dwelling is not required. Few assessments covered this point, although it may not have been relevant in many (or any) cases.
- 6.43. The analysis leads to the conclusion that the guidance needs to be clarified, with paragraph 41(d) worded as follows:

41 (d) *no other dwelling(s), which is (are) suitable and available, should be capable of meeting the functional need. If there are existing dwelling(s) on the unit it needs to be shown why these cannot be used to meet the needs of the enterprise for a resident worker, and why labour or residential arrangements cannot be re-organised to ensure that the existing accommodation meets the needs of the enterprise without the need for a further dwelling.*

- 6.44. At the same time, TAN (W) 6 paragraph 43 should be retained in its current form.

Other normal planning requirements including siting (TAN (W) 6 41(e))

- 6.45. A surprising proportion of applications reviewed had proposed dwellings that were located some considerable distance from farm buildings. Yet as noted in TAN (W) 6 paragraph 49 “*Care should be taken to choose a site which is suitably located to meet the identified functional need and well-related to existing farm buildings or other dwellings*” (to reduce landscape impact).
- 6.46. On paper, and this is confirmed through the case studies, an isolated siting does not serve the agricultural needs of the farm well. Many second dwelling applications were put forward to enable sons to live on the farm and move out of the farmhouse, but their need to be on site to identify and deal with problems is compromised by new dwellings being isolated from the farmyard.
- 6.47. Detailed interviews identified that these isolated sites were being selected because the older generation proposed to retire into the new dwelling either immediately or in the near future.
- 6.48. Isolated locations not only reduce the agricultural benefits of the dwelling, but they make future sale of the dwelling away from the farm very much easier. The result of sale (say on the death of the retired farmer) could create a similar need for a new dwelling in 25 years time when the offspring of the next generation are ready to ‘leave the nest’.
- 6.49. This potentially suggests that:
- there is a need to modify the guidance to ensure that locations close to existing buildings are selected, except in exceptional circumstances;
 - the power to apply Section 106 obligations preventing future sale away from the farm of the new or existing dwellings is emphasised (TAN (W) 6 paragraph 55)

6.50. Thus if the current guidance were to continue, it could be amended to make more specific reference to siting (based on TAN (W) 6 paragraphs 41(e) and 55) as follows:

41(e) *the siting of the proposed dwelling should relate closely to the activities for which there is a functional need. In most cases this will mean that the new dwelling should be sited in close proximity to existing farm buildings and should not be isolated (more than 100 metres) from the farmstead. At the same time other normal planning criteria, such as landscape impact and access, will need to be satisfied.*

OTHER CONSIDERATIONS

6.51. In addition to the five tests, the guidance in TAN (W) 6 requires consideration to be given to a number of other matters, notably:

- the size of dwelling (paragraph 47);
- the extent to which security matters can be used to make a case for a new dwelling (paragraph 44);
- whether different considerations apply to forestry dwellings (paragraph 52);
- and the use of occupancy conditions and legal agreements (paragraph 53 – 55).

Size of dwelling

6.52. Policy guidance states that a dwelling should be of a size “commensurate” with the functional need and should not be unduly expensive to construct in relation to what the farm can afford. There is no other guidance to enable local authorities to assess the appropriate size.

6.53. Problems have arisen as a result of the current guidance. Some authorities consider that size should relate to the profits generated by the farm, others consider that it is the functional need for a worker which dictates the size and therefore such dwellings should not exceed three bedrooms, being typical of a farm worker’s accommodation. Of our sample local authorities, only three provided policy guidance on size relative to the functional need (para 3.26).

6.54. Case law in the Court of Appeal decision for R v Newbury District Council ex parte Chieveley Parish Council (1997) suggests that size restrictions must be imposed as a condition on an outline application, and cannot be enforced when details of reserved matters are submitted.

6.55. In this context therefore it is noticeable that amongst the case studies no conditions were imposed at outline stage limiting size. In one case the subsequent submitted details were for a much larger house than had been indicated at the outline stage.

6.56. This leads to the conclusion that lpas need to be advised that a size condition should be imposed on dwellings at the outline stage.

6.57. In addition, TAN (W) 6 (48) (Box 3.2) advises that in certain circumstances it may be appropriate to remove specific permitted development rights so that the size and character of the dwelling continues to reflect its functional purpose. This is important

as it affects the future size and therefore affordability of the property. In none of the case studies reviewed was such a condition applied. But Ipas should give serious consideration to such a condition and in cases of outline applications should indicate that this will be considered as part of reserve matters.

The role of security

- 6.58. TAN (W) 6 advised in paragraph 44 that “*the protection of livestock from theft or injury from intruders*” may contribute on animal welfare grounds to the need for a dwelling. But no reference is made to the need for security of deadstock eg. machinery, manufacturing processes or stored products. In none of the case studies was a need for a dwelling cited on security grounds. Accordingly the guidance is being followed. Nevertheless, some reference might be made in the guidance to the fact that the security of machinery and processing plant etc does not generate a need to live on site.

Forestry dwellings

- 6.59. None of the sample authorities had received an application for a forestry related dwelling. A dwelling for charcoal production had been refused (and dismissed on appeal) by one authority but it was more recent than our sample period. Charcoal production in that case was related to educational facilities (subsequently approved) and a low impact dwelling, not forestry.
- 6.60. There is no evidence, therefore, to suggest that the existing guidance relating to forestry dwellings, which would in any event need to be assessed against the criteria in TAN (W) 6 paragraph 41, needs to be amended. There remain few circumstances in which a new forestry dwelling is likely to be needed.

The Use of Occupancy Conditions

- 6.61. TAN (W) 6 paragraph 53, cross refers to circular 35/95 and advises on the imposition of an occupancy condition.
- 6.62. From the case files, there is some variation in the wording of occupancy conditions imposed (paras 5.17 – 5.19). There may be merit therefore, to achieve consistency, in following the approach adopted in PPG7 (1997) (England) whereby the recommended condition is set out within the relevant TAN guidance.
- 6.63. Reflecting the emphasis on farm diversification and wider diversification of the rural economy, this condition potentially requires rewording to allow a farm to diversify without being in breach of the condition and also to bring rural enterprises more generally under the same occupancy condition. In a CLA paper of August 2000²⁶ the need for a wider interpretation of the agricultural occupancy condition was recommended to allow occupation by those employed in farm diversification projects and possibly other local rural businesses. In this way the condition could be considered as a form of local needs policy by providing affordable housing for rural

²⁶ Country Landowners Association – Mark Jones (August 2000) *Agriculture and Rural Economy Sub-committee – Agricultural Occupancy Conditions*

employees. This is an important point and is considered further in Chapter 8, following analysis of applications to remove agricultural occupancy conditions.

SOCIAL AND FAMILY FARMING ISSUES

- 6.64. It is clear from the applications analysed that there remain genuine cases for new dwellings in support of countryside activities. However, the greater pressure (at least in the study sample) is coming from applications for second dwellings on holdings where the apparent motivation is for retirement or to provide accommodation for a family member.
- 6.65. For this reason, through the case studies, the underlying motivation for the application has been explored, as summarised in **Table 6.5**.

Table 6.5: Investigation of alternative accommodation by applicants (14 case studies)

Ref	Decision	Siting (relative to farm buildings)	Stated occupant (S) Actual occupant (A) (Existing dwellings)	Other property investigated by the applicant and reasons why it was dismissed. <i>Consultants' views in italics</i>
1	A	250m	Son/applicant (S) Father and sister (A) (one existing dwelling)	Son and father partners in the farm. Currently son lives 7 miles away. Other potential dwellings in locality too expensive and too far away. <i>This is a very remote area. The nearest settlement is 3 miles away.</i>
2	A (Appeal)	130m	Applicant (S) Worker (A) (two existing dwellings)	The farmer lives 0.5 miles away on an adjacent unit from where he runs a construction business with his sons. No alternative housing was considered able to satisfy the need to be on site, although his brother already has a dwelling on the unit and the original farm house had been demolished by the current applicant to make way for new farm buildings. <i>Alternative housing should have been investigated by the local authority.</i>
3	R. Repeat application A	70m	Son (S) Son (A) (one existing dwelling – farm located close to a village)	The son works on the farm. Investigations suggested other housing too far away. Empty bungalow 1.5 miles away owned by the family rejected as an option as was a house on the other side of the village with an AOC. <i>Cost and a desire to build a new house were the primary motivations. A 4-bedroomed house has been built for less than the cost of a 2-bedroomed bungalow in the nearby village.</i>
4/5	A	170m with separate drive	A worker (S) Parent (A) (one existing dwelling)	The son works full time on the farm and needed a house on the farm. Local property considered much too expensive. <i>Cost of local housing was more than twice that of the new building. The bungalow was designed for retirement of the father firmly in mind.</i>

Table 6. 5: Investigation of alternative accommodation by applicants cont/

Ref	Decision	Siting (relative to farm buildings)	Stated occupant (S) Actual occupant (A) (Existing dwellings)	Other property investigated by the applicant and reasons why it was dismissed. <i>Consultants' views in italics</i>
8	A	Over 300m	Son (S) Son initially, parent within a few years (A) (one existing dwelling)	The son works full-time on the farm and currently lives 2 miles away. A local 3-bed terrace house would cost £114,000, but new built detached bungalow on the farm under £70,000. Farmer did not want to retire to a terrace house. <i>There was a clear disparity between what was affordable and what was acceptable. Agricultural needs were secondary.</i>
10	A	At site entrance	Applicant (S) Applicant (A) (no existing dwelling)	The applicant sold their house to purchase the caravan site. House originally attached to the site (a hotel) was sold separately at the time that the site was purchased. <i>The applicants believed that they could not run their business unless they were on site. No other investigations were made, even though the Council did not believe that it was necessary for them to be on site.</i>
12	A	20m	Applicant (S) Applicant (A) (existing mobile home)	Lived in village ½ mile away but after 10 years put mobile home on the land. Due to business growth and personal circumstances, the applicant felt that they needed to be on site. <i>Housing in the local area is very expensive. The application was motivated by a need to be on site, not by a lack of local housing.</i>
13	A	20m	Son (S) Son (A) (one existing dwelling)	The applicant attempted to purchase the house that was sold separately to the farm for his son, but was outbid. They then investigated affordable local housing, but found that there was none. <i>The need to be on site was the primary motivation.</i>
16	R	Close to farm buildings	Son (S) Son (A) (one existing dwelling)	The parents run the livery business on the holding while the son runs a garage business off-site, although he might take on the livery business long term. The applicant investigated alternative housing, but it was all too expensive. <i>The price of alternative housing in the area was the driving force behind this application.</i>
18	A (approval of details pending)	50m	Applicant (S) (existing mobile home)	Applicant was adamant that there was a need to live on site. There was no investigation into affordable housing in the local area. <i>The need to be on site for a farm shop is questionable. Alternative housing should have been investigated.</i>
20	A	Isolated site	Applicant (S) Applicant (A) (one derelict dwelling)	A dwelling on the farm stood empty for 25 years. Applicant considered renovation, but was too costly and too much work. Did rent a bungalow in the local area, but alternatives too expensive to buy. <i>Lack of affordable housing and poor condition of existing dwelling forced the application.</i>
24	A (Not built and likely to lapse)(1)	Close to farm buildings	Son (S) Son (A) (one existing dwelling)	Son works on the farm and lives with the farming family. Applicant argued that a local house would meet the need, but they are all too expensive. <i>The applicant has stated that the point of the application was to highlight the lack of affordable housing in the local area.</i>

Table 6. 5: Investigation of alternative accommodation by applicants cont/

Ref	Decision	Siting (relative to farm buildings)	Stated occupant (S) Actual occupant (A) (Existing dwellings)	Other property investigated by the applicant and reasons why it was dismissed. <i>Consultants' views in italics</i>
39	R	No agricultural buildings	Applicant (S) Applicant (A) (no existing dwelling)	It would have been cheaper for the applicant to build than to purchase in the local area. She farmed this 3 ha. holding successfully from 4 miles away. <i>Agricultural need was a secondary consideration. The ability to build a house more cheaply than to purchase was the primary motivation.</i>
43	R	Isolated from farm buildings	Parents (S)	Alternative housing was investigated after refusal. There was no affordable housing in the local area and the son was forced to buy 8 miles away. <i>The new bungalow was going to be for the parents to retire into as mother is disabled. The son was forced to move away, but was not working full-time on the farm anyway as he ran his own contracting business. The intention was for him to take over the farm.</i>

(1) Dwelling not built as the range of conditions relating to design and materials made it "practically unbuildable"

6.66. From this analysis it is clear that affordability was a key concern in the proposals for 8 out of the 14 applications reviewed (57%). For second dwelling applications an underlying motivation was not functional need (which was often marginal) but to house a family member (or the retiring farmer) at an affordable price.

6.67. There are, inevitably, considerable social, farming and economic advantages from gaining consent for a dwelling on the farm, whether it be occupied by son or parents:

- the investment needed to provide a substantial dwelling is considerably less, typically 30 – 40% of the cost of purchasing a comparable local property (even if it has an occupancy condition);
- it means that two generations are able to live in relatively close proximity, with social and welfare advantages (caring for ageing relatives etc...);
- there is easy and quick call on family members for jobs that require more than one (or two) workers, such as moving sheep or TB testing cattle;
- it ensures that family farms remain as family units.

6.68. Would a refusal have resulted in the family farm fragmenting? Exploration of this issue through the case studies has lead to the clear conclusion that it would not have done. There would most definitely have been some social upheaval and, to the extent that it could be explored, some additional economic pressure on the farm to fund open-market housing. The farm would not have been subdivided or sold off, however.

6.69. A central concern for applicants is (quite understandably) the disparities between the type of house the retiring farmer (or first time buyer son) can afford and what they desire. A farmer who has lived all his or her working life in an isolated dwelling with

garden will find a mid terrace property unacceptable, yet even that type of property is likely to cost considerably more than a new built retirement bungalow on the farm.

6.70. This analysis suggests that:

- high local housing values (relative to a new build alternative) have driven many to consider building on the farm;
- there is a big disparity between expectation and what can be afforded on the open market;
- many of the applications for second dwellings are motivated by retirement;
- refusal would have had negative social and economic implications;
- but it would not have prejudiced the continuation of the family farm.

6.71. This central interplay with affordability is picked up in Chapter 8.

FARM DIVERSIFICATION

6.72. As noted in Chapter 2, there is now a strong policy emphasis on farm diversification. Within the case studies there were only three applications relating to non-agriculturally based enterprises. Two of these were for equine related ventures (one of which was run in conjunction with sheep) and one for a caravan park. Equally, the general lack of farm accounts (see comments on the financial test above) prevented identification of other income sources. In consequence, the case studies have not been helpful in illustrating the diversity of income sources (on and off-farm) that are likely to become a feature of many farms. Yet in the future it will be important that the tests for an essential dwelling are able to take fair account of these diversified enterprises, which are likely to become the norm.

Functional Test

6.73. As already argued, the functional test is the primary test. Logically it should be applied to all enterprises on the holding (both farm and non-farm), with the functional test relating to the cumulative total of all enterprises on the unit which have a functional need (as defined in TAN (W) 6). For example:

- unit 1 has a part-time breeding beef cattle enterprise and a part-time horse livery enterprise;
- unit 2 has a part-time breeding beef cattle enterprise and a part-time paintball enterprise.

6.74. Of these two units, the mix of enterprises on unit 1 is much more likely to generate an overall functional need than those on unit 2, where the paintball enterprise is unlikely to have a functional need to live on-site and the beef cattle enterprise, whilst having a functional need, is only part-time.

Full-time Test

- 6.75. In the same way, the full-time test should relate to the cumulative total of all those enterprises on the unit (whether agricultural or not) which have a functional need. The purpose of the test is to ensure that where dwellings are granted they are for full-time and not part-time workers. The test should therefore require that the worker needing to live on site is fully or primarily employed on that unit, although this may be across a diversity of enterprises.

Financial Test

- 6.76. For the financial test, the starting point must be an assessment of the overall viability of the unit. Thus all forms of diversified income included in the trading accounts should be considered and the resultant net income assessed to identify whether or not the unit provides a realistic return on the management and physical labour expended on its various enterprises. However, it will also be important to assess the viability and likely longevity of the enterprise(s) that generate the functional need because if they are likely to be short-lived, the need for the dwelling will also be short-lived. Taking the two units described above:
- in the case of unit 1, if both enterprises (cattle and livery) contribute to the overall viability of the unit, then there is a reasonable prospect of the unit continuing;
 - but in the case of unit 2, if the income from the cattle enterprise is only a small part of the overall income of the holding, or if it is a large part but the fixed costs of the farming enterprise exceed the income from the cattle, then the longevity of the cattle enterprise is questionable. If the cattle enterprise is not viable it may well be abandoned and thus the need for the essential dwelling will be short-lived.
- 6.77. This may be a difficult analysis in some cases as few accounts are easy to apportion between enterprises, especially in terms of fixed costs. Nevertheless, it is essential that the longevity of the enterprise(s) which generates the functional need for the dwelling is evaluated realistically. In these assessments it will not normally be appropriate to consider off-farm income, as the purpose of the financial test is to assess the long term viability of the enterprise (or collection of enterprise) that gives rise to the need to live on site. Off-farm work, by definition, does not require an on-farm dwelling.

Other Dwellings and Siting Tests

- 6.78. Finally, both the test of other dwellings and siting should apply in the same way to diversified enterprises as they do to agricultural enterprises.
- 6.79. Chapter 8 gives further consideration to the inclusion of diversified activities as a justification for a dwelling in the open countryside. The above discussion indicates how the current tests should be applied were the scope of this concession expanded.

7. REMOVAL OF AGRICULTURAL OCCUPANCY CONDITIONS (AOCs) AND CERTIFICATES OF LAWFULNESS (CLEUDs)

- 7.1. This Chapter reviews the issues associated with the removal of agricultural occupancy conditions and applications for Certificates of Lawfulness for Existing Use or Development (CLEUDs). In both cases it has involved review of seven case files and three more detailed case studies.

REMOVAL OF AGRICULTURAL OCCUPANCY CONDITIONS

Policy

- 7.2. Agricultural Occupancy Conditions (AOCs) have been imposed on new farm dwellings since 1949. Advice in TAN (W) 6 paragraph 56 covers situations where the occupancy condition has outlived its usefulness. It advises that restricted dwellings should not be kept vacant nor should current occupants be obliged to remain in occupation because a condition has outlived its usefulness. It is the need for a dwelling *“for someone solely, mainly or last working in agriculture in an area as a whole and not just on the particular holding that is relevant”*. There is no more specific guidance on how this need should be assessed.
- 7.3. As noted in para 6.63 there has been a call from the CLA and others for the potential broadening of the wording of agricultural occupancy conditions to embrace local workers as well as those solely employed in agriculture to reflect, amongst other things, the increasing emphasis on farm diversification.

Nature of applications for the lifting of AOCs

- 7.4. In most cases an application for the lifting of an AOC occurs at the time that it is proposed to sell the dwelling. The main reasons identified for sale, from the review of case files, relate to:
- divorce and bereavement;
 - the need for an older resident to move closer to relatives / medical facilities;
 - current resident not associated with agriculture;
 - no further need for a second dwelling on the farm;
 - property built but then the circumstances of the applicant change.
- 7.5. The applications reviewed mostly related to dwellings that had been built within the last 30 years. In many cases the originally claimed agricultural need had subsequently disappeared and the agricultural land associated with the dwelling had been sold off or the dwelling was for a retiring farmer who had subsequently died.

Table 7.1: Nature of applications for the lifting of agricultural occupancy conditions (sample 7)

Ref	Age of dwelling	Original justification for dwelling	Agricultural land attached to dwelling when built	Area of unit now	Date when agricultural need ceased
25	1975	Retirement bungalow	No data	No data	13 years ago
26	1981	As dwelling for farmer	35 ha. (90 acres)	1 ha. garden	After 6 weeks when farmer died suddenly
27	1995	Proposed farm enterprise - development curtailed by farmer's illness	26 ha. (65 acres)	19.5 ha. (48 acres)	2002 when husband died
28	1983	Proposed expansion of farm enterprise which never occurred	15 ha. (37 acres)	15 ha let out	By 1986 when husband working full time in his own contracting business
29	1970	Retirement dwelling	No data	None	No data
30	1973	Retirement dwelling	No data	None	No data
31	1991	For supervision of animals	14 ha.	14 ha	No data

Assessing agricultural need

- 7.6. Before an application for the lifting of an agricultural occupancy condition is considered, most but not all Ipas, (paras 3.31 and 5.28) will require evidence that there is no longer an agricultural need for a property with an AOC in the locality. The standard practice is to require that the property is marketed at a value that reflects the occupancy condition (normally 30% - 40% less than the open market value) over 6 months to a year. From the case files it is clear that such marketing does not occur in all cases, reflecting the lack of policy on this issue in some development plans (para 3.31) (**Table 7.2**). Even when marketing is undertaken, in some cases it can be a sham, with one applicant commenting that “*marketing such properties is misleading as there is no intention of selling the property at the reduced price*”. This highlights the potential problem of using what is a financial test (willingness to sell and to purchase at a particular price) as an indicator of agricultural need.

Table 7.2: Marketing of properties (sample 7)

Ref	Length of the marketing	Evidence of valuation	Discount	Viewings and offers	Lpa decision
25	26 months	None (Estate Agents letter only describing situation)	Reduced in stages from £135,000 to £99,950	Sale agreed at £99,950. Buyers pulled out due to AOC	A
26	18 months	None	No evidence	No offers. Councils consultants confirmed no demand in area	A
27	9 months Withdrawn from market before application	Value agreed with lpa	35 – 40%	8 viewings. No “acceptable” offers	A
28	It was not marketed	None	Not marketed	None	A
29	On and off for 3½ years	Council’s valuation section confirmed	Price revised from £95,000 Feb 99 to £115,000 in 2002. Valuation office confirmed	Prospective purchaser pulled out due to AOC removal application	A
30	None	None	Not marketed	None	A
31	None	None, applicants argued that the condition is “unenforceable”	Not marketed	None	A

7.7. From the above it is clear that there is no consistent approach amongst lpas to the marketing of properties or other assessments of agricultural need. Further, all applications reviewed were approved.

7.8. It is also clear from the case study interviews that the main catalyst for seeking a lifting of the occupancy condition was the desire to increase the value of the property. In some of the interviews, it was clear that the occupants needed to maximise the value of their property in order to move house, because of the disparity between AOC restricted and non AOC restricted prices.

7.9. A number of issues arise from this analysis:

- some dwellings were originally permitted for what proved to be dubious or short-lived agricultural needs;
- another factor has been the superior nature, size and quality of the houses permitted, with some being large dwellings with expansive views;
- typical valuations have involved 30-40% discounts from open market, unencumbered freehold values. However, high open market values mean that

even after such discounts, the properties are not necessarily affordable to agricultural workers or retiring farmers;

- the evidence submitted raises questions about how genuine the marketing campaigns have been. Detailed interviews confirm that some (but not all) applicants had in mind the goal of lifting the AOC if possible, because of the very substantial uplift in value connected with that tie.

Analysis

- 7.10. Part of the current pressure for the lifting of agricultural occupancy conditions lies in the more relaxed historical approach to permitting agricultural dwellings in the 1970s and 1980s with dwellings now coming forward that have no land attached. Evidence from the new dwelling cases analysed suggests that, at least within the sample local authorities, there is no longer any significant number of new permissions for enterprises which are based on future proposals or enterprises of dubious longevity. Hence those applications where the AOC is lifted on the basis that the original justification did not transpire, **should** be reduced in the future.
- 7.11. Nevertheless, the number of second dwellings for family members permitted recently may lead to similar surpluses in 20 years time when the currently retiring farmers pass on or move into sheltered or village housing but the next generation are not of an age to want their own accommodation on the farm.
- 7.12. There is clearly a lack of interest from genuine buyers able to comply with AOCs. This may be due to a number of reasons:
- even with a 30-40% discount the properties are still expensive (and often too big or well appointed) for rural workers (para 4.21). So far as farmers are concerned, they are still more expensive than a new build on the home farm;
 - whilst this might suggest that the discount should be greater, say 60-70%, there will come a point at which non-farming buyers, particularly cash buyers having sold their own houses, will buy agricultural property and take a risk on not being enforced against. A 70% discount is unlikely in practice because of this.
- 7.13. Yet against a wider spectrum of encouragement for a more diverse rural economy and the lack of rural affordable housing for those meeting essential rural needs, there appears to be a strong argument for retaining a stock of restricted rural property. It is suggested therefore that a two-pronged approach may be required:
- *A change in the current wording of the occupancy condition to reflect rural diversification, with the wording potentially expanded to include those “working or last working in agriculture or forestry or a diversified enterprise on the holding or in the immediate locality, or those that are in employment deemed by the local authority to be essential in the locality who would be eligible for consideration for affordable housing under the local authority’s housing policies”.* This condition could be applied to new dwellings, in cases of enforcement against non-compliance, and in cases where there is an application for the lifting of the AOC.

- Greatly improved monitoring and enforcement of existing occupancy conditions to ensure that the price of such dwellings remains 'affordable' because of the restricted market to which they apply.

7.14. These points are picked up in Chapter 8.

APPLICATIONS FOR CERTIFICATES OF LAWFULNESS FOR EXISTING USE OR DEVELOPMENT

- 7.15. There is no policy on Certificates of Lawfulness (CLEUDS) in TAN (W) 6. Such applications are considered on the basis of the legality of the use, taking into account whether or not the evidence suggests, on the balance of probability, that the breach has occurred unbroken for a period in excess of 10 years. Policy considerations are irrelevant.
- 7.16. Where a CLEUD is granted the breach of the condition is deemed to be lawful, although the occupancy condition is not lifted. Thus if the property was subsequently empty for a significant period or became occupied by someone who satisfied the condition, any subsequent occupation in breach of the condition would be a breach capable of being enforced against, notwithstanding the CLEUD (*Nicholson v SEE and Maidstone DC 1998*).

Nature of applications

7.17. The CLEUD applications analysed related to various sizes and types of dwelling.

Table 7.3 : Nature of applications for CLEUDs (sample 7)

Ref	Age of dwelling or date of permission	Size	Why breach occurred
32	1972	No data	1979 ceased to be agricultural worker
33	1973	No data	Various tenants (non agricultural) since 1992
34	1972	3 bed bungalow	1980 occupied by non agricultural worker
35	1987	4 bed detached house	1988 occupied by non agricultural workers
36	1966	Bungalow	1978 when aunt of original occupier moved out
37	1970's	No data	1975 agricultural intentions did not materialise. Non agricultural occupiers since
38	1980	No data	No data

7.18. From this sample which has been selected at random, the longest period for which an agricultural use lasted was 20 years; but most failed within 10 years. In one case the need was for a riding school which was never built.

7.19. It is believed that in most of the cases, the application related to a breach of occupation by the original applicant. This further emphasises the need for monitoring

by local authorities. The results suggest that there may be a considerable stock of rural housing where residents are living in breach of the occupancy condition and, if left alone, will be able to gain a Certificate of Lawfulness simply as a result of the passage of time.

- 7.20. How these findings interrelate with future policy for agricultural workers dwellings is considered further in Chapter 8.

8. DISCUSSION AND RECOMMENDATIONS

CONFLICTING TENSIONS

- 8.1. Essential dwellings in the open countryside have always been a contentious area of planning and remain so, precisely because of their 'exceptional' nature. They are an 'exception' to the strict development control constraints normally imposed on the open countryside. This restraint has been a central plank of the planning system since its introduction in 1947 and must remain the starting point for any consideration of development outside rural settlements.
- 8.2. In many respects the findings of this research expose an even greater tension in policy for essential dwellings than has previously existed.
- 8.3. At the heart of this tension is, on the one hand, the need to limit abuse of this concession in planning while, on the other the need, embodied in national policy, to support the family farms of Wales and the integrity of Welsh rural communities against a backdrop of unprecedented recent house price rises in rural Wales. Further, there is the central need to foster farm diversification and the broader diversification of the rural economy, whilst continuing to acknowledge the importance of agriculture, both economically and as custodian of the landscape.

Speculative development

- 8.4. From previous studies, and from discussions held during this research, it is clear that in the past there has been considerable use of this exception in planning for speculative development or as a means of gaining a house in the country by those outside agriculture or those marginal to it. In the last major report on this subject *Planning Controls over Agriculture and Forestry Development and Rural Building Conversions* (1995) a body of evidence illustrated dwellings being built under this concession where there was no justifying agricultural activity; or an agricultural enterprise was planned but never materialised; or where the size of the holding or enterprise was too small to ever be economically viable and subsequently collapsed after the dwelling had been built (paras 3.7 & 4.4).
- 8.5. These types of development, which are largely the product of planning decisions in the 1970s, 1980s and early 1990s, are clearly evident in current applications being made for the removal of agricultural occupancy conditions – with 60% of such applications relating to dwellings on holdings of 5 hectares or less (para 4.21). These 'essential' dwellings, which now lack an agricultural justification, are reported by planning officers to be a particular feature of attractive accessible countryside under development pressure from commuting, such as the Vale of Glamorgan and the Gower (para 4.6).
- 8.6. From this research it appears that, with the introduction of more stringent tests over the last five years for the approval of essential dwellings, the number of such speculative applications is declining (para 4.4). Nevertheless, the pressures that encourage such developments are clearly on the increase with:

- 37% of all farm holdings in Wales being under 5ha in 2002 (para 2.24)
 - a steady increase over the last few years in the number of holdings falling into the other category (para 2.4);
 - the share of farms bought by non-farmers in England and Wales in the last three months of 2003 rising to 51% (para 2.24);
 - the price of rural housing in Wales increasing by nearly 20% more than the national average over the two years 2002-2003 (para 2.29).
- 8.7. It would therefore be very unwise for the current strict controls over essential dwellings to be changed to respond to other policy concerns without giving very careful consideration to the likely implications for speculative development driven by factors largely outside agriculture.

Welsh family farms

- 8.8. At the same time, national policy stresses the importance of supporting the family farm in Wales as a central focus of rural communities and the Welsh language (para 2.42). From this research it is clear that, at least in the more rural areas of Wales, the main pressure for essential dwellings is currently coming from established farming families where the identified need is for an additional dwelling for another member of the family who works part or full-time on the farm. It is anticipated that this person will take over the farm on the retirement of the incumbent farmer, with the farmer retiring to the proposed new dwelling (paras 4.13 & 6.4). In the sample reviewed, the majority of these second dwellings were approved, although if the current tests for essential dwellings set out in TAN (W) 6 were strictly applied it is probable that a considerable number would have been refused (para 6.9).
- 8.9. Key factors in these applications are rising house prices and the lack of affordable housing. With rapidly rising rural house prices it is invariably cheaper to build a new dwelling on the farm than to acquire an existing local dwelling, even if it is offered at a discounted price with an occupancy condition. As illustration, the average price for a detached house in rural Wales is now in the region of £160,000 (Table 2.8): at a 40% discount with an occupancy condition the value would be £96,000. Yet from the applications reviewed a new house on the farm can be built for £70,000 (Table 6.5). Furthermore, this dwelling on the farm will be to the applicant's exact specification and will be in the preferred location, allowing two generations of the same family to live in relatively close proximity with functional, social and welfare advantages (para 6.67).
- 8.10. A central concern for applicants is the disparity between the type of house a retiring farmer (or first time buyer son/daughter) can afford (on the open market) and what they desire, with a mid-terrace property likely to cost considerably more than a new build on the farm (para 6.69).

Farm diversification

- 8.11. At the same time, it is essential to take account of the policy drive for farm diversification, including tourism (paras 2.42 & 2.46). This raises a number of issues

for future policy for essential dwellings, not least because an increasing number of rural land-based enterprises will be unrelated to agriculture, and because the typical future farm enterprise is likely to draw income from a range of sources including on-site agricultural and non-agricultural activity and potentially off-site employment. This has implications for what activities are deemed to be eligible for an essential dwelling and what tests they would need to satisfy to justify such a dwelling.

- 8.12. Both the implications of housing affordability and farm diversification need to be taken into account in any suggested change in policy. But this needs to be in a way that does not open the door to spurious applications.

CONTROLLING ESSENTIAL DWELLINGS IN THE OPEN COUNTRYSIDE

- 8.13. The control of essential dwellings in the open countryside, both in policy and practice, has primarily been through the methods used to assess applications for new dwellings. However, control over this concession in planning is affected by four factors:

- 1) the meeting of criteria before the application is approved;
- 2) the imposition of conditions at approval – in particular an occupancy condition which limits who is eligible to live in the property, thus restricting the future use of the property and thereby reducing its market value;
- 3) the monitoring of compliance with the occupancy condition;
- 4) the limiting of circumstances in which the occupancy condition can be lifted.

- 8.14. **(1) The meeting of criteria or tests at the application stage:** Applications for essential dwellings have always been expected to meet certain criteria/tests before they can be approved. Over the years these criteria/tests have become more stringent to try and limit abuse of this concession in planning (Chapter 3). From this research, it is clear that national guidance on tightening these criteria has not necessarily been taken forward into current development plans. For example, not all extant development plans across the nine Welsh authorities reviewed make specific mention of the financial test; none identify that the enterprise should have been in operation for at least three years (para 3.24); only two plans identify that the functional need should relate to a full-time worker; and only four plans identify that it should be established that the functional need cannot be met by other dwellings in the locality (para 3.25).

- 8.15. In turn, it is clear that there is still very considerable variation across local authorities in the way that the tests are applied, with the financial test often ignored or only given cursory attention. Indeed, it appears that some applications continue to be reviewed against the guidance set out in PPG7 1992 which was superseded with the introduction of TAN (W) 6 in 2000 (paras 5.10, 6.14-6.15, 6.25). The failure to apply the financial test is of particular concern in that the specific purpose of this test is to ensure that the enterprise that justifies the dwelling is viable and is likely to

- remain so for a long time, so that the need for the dwelling will be maintained into the future.
- 8.16. Nevertheless, despite this variation in application, most Ipas consulted felt that the increased rigour of the tests has greatly reduced abuse of this concession in planning. It also follows from this that if all Ipas followed the policies set out in Planning Policy Wales and TAN (W) 6 on essential dwellings, there would be even less abuse of this concession.
- 8.17. **(2) Imposition of conditions:** All Ipas consulted and all approved planning applications for a new agricultural dwelling reviewed, included an agricultural occupancy condition (AOC) restricting the occupation of those living in the dwelling *to those currently or mainly or last working / employed in agriculture*. However, the wording of this condition varies from Ipa to Ipa and relatively little use is made of the other potential conditions / legal agreements that TAN (W) 6 suggests may be considered helpful in retaining the dwelling for its proposed use (paras 5.17 – 5.21).
- 8.18. **(3) Monitoring of compliance with occupancy conditions:** A very significant finding of this research, however, is that there is very little monitoring by Ipas of agricultural occupancy conditions once they have been imposed. Of the 19 Ipas initially consulted, only three had an up-to-date list of dwellings with occupancy conditions. If there is no accessible record of AOCs then they cannot be monitored. Yet if there is little monitoring and enforcement there is strong encouragement for those outside agriculture to purchase such properties in anticipation of applying for a Certificate of Lawfulness once a ten-year breach of the condition has elapsed (paras 5.24 – 5.26). While views vary amongst Ipas as to the number of CLEUDs currently being applied for, areas under development pressure, such as the Vale of Glamorgan, report receiving between 20 and 50 such applications a year. Without monitoring, therefore, the use of occupancy conditions has little long term value.
- 8.19. In addition, farm diversification is likely to lead to more frequent breaches of agricultural occupancy conditions in the future, even on established farms. This is likely to further increase the number of applications for the lifting of AOCs and for CLEUDs.
- 8.20. **(4) Lifting of occupancy conditions:** Finally, it is evident that there is a higher approval rate for the lifting of occupancy conditions, than for applications for new agricultural dwellings (para 4.25). Furthermore, AOCs are more easily lifted in situations where there is no long term functional need, underlining the importance of the tests applied at the outset for applications for new essential dwellings. Also, as reported by the Inspectorate these dwellings may be of a size that is outside the range of most people, let alone rural workers, even with discounting (para 4.21).
- 8.21. These applications for the lifting of AOCs are usually made at the proposed sale of the property, with the aim of maximising the return on the applicant's investment (para 7.8). The test applied to assess whether there is a continuing need for a restricted property in the locality is to market it at a discounted rate (usually 30% – 40% less than its open market value) for a given period (para 7.6). Yet it is clear that there is considerable variation between Ipas in the rigour with which this approach is applied and that the marketing can be a sham. This indicates the problem

of using a financial or marketing test (willingness to sell or purchase a property at a particular price) as an indicator of agricultural need, especially as many agricultural workers cannot afford the properties even at discounted prices (para 7.6).

- 8.22. The above highlights that future policy for essential dwellings in the open countryside cannot be seen just in terms of the approach adopted for new dwellings. If widespread abuse of this concession in planning is to be avoided, whilst meeting the needs of rural workers, it is essential that policy takes account of the full life cycle of such properties. This is particularly important at a time when there is great concern about the break up of rural communities with a high percentage of incomers entering the rural housing market and taking market values outside the reach of local people.

Summary of key points arising from this research:

- 8.23. *Applications for new essential dwellings in the open countryside*
- There remains a small but genuine need for new essential dwellings in the open countryside, supported by the currently improved economic fortunes of agriculture in Wales (Chapter 2).
 - From this study it appears that the majority of current applications for new essential dwellings in the open countryside relate to genuine established farm businesses, although at appeal the Inspectorate reports that there continues to be regular examples of people attracted to the idea of rural living with no commitment to running a justifying viable rural business (para 4.6).
 - The cost of local housing is a factor encouraging applications for new essential dwellings.
 - Many such applications relate both to next generation and retirement housing provision.
 - Refusal of such applications would have negative social and economic impacts on the farm although there is no clear evidence that refusal would prejudice the structure or future of those farms (paras 6.68 – 6.67).
- 8.24. *Applications for the removal of agricultural occupancy conditions (AOCs)*
- There is a clear financial gain for the applicant in cases where an agricultural occupancy condition is lifted.
 - Before approval is given for the lifting of an AOC there is usually a requirement that the property has been marketed at a price below the open market value.
 - The genuine nature of this marketing is not always apparent.
 - AOCs appear to be more easily lifted where their justifying need is short-lived or never materialised.
- 8.25. *Applications for Certificates of Lawfulness*
- These applications are largely successful because of the lack of monitoring of compliance with AOCs.
 - The number of these applications is likely to increase as a consequence of both lack of monitoring and farm diversification.

RECOMMENDATIONS

8.26. Reflecting the discussion above, the recommendations from this study seek to answer the following questions:

- Should any concession in planning be retained for essential dwellings in the open countryside?
- Should the scope for new essential dwellings in the open countryside be widened beyond agriculture and forestry?
- If it is assumed that a concession in planning remains, should it be made easier or more difficult to gain planning permission?
- Is there a case for less stringent application of the tests in certain instances?
- Should both permanent and temporary tests be retained?
- Should the range of conditions and other guidance in TAN (W) 6 be retained?
- Is there a case for altering the wording of occupancy conditions and how should they be applied?
- How can the operation of occupancy conditions be made more effective?

8.27. These are considered in turn below.

Should a concession in planning for new essential dwellings in the open countryside be retained?

8.28. This research has identified that there is a small but continuing number of genuine applications for essential dwellings in the open countryside. For the benefit of the agricultural and wider rural economy it will be important that this concession in planning is retained but in ways that avoid abuse of the system.

Recommendation 1: There remains a justifiable case for continuing the concession in planning for essential dwellings in the open countryside.

Should the scope for new dwellings in the open countryside be widened?

8.29. This research has specifically not addressed issues relating to low impact development in the open countryside which have been examined via separate research. But it has considered the implications of farm diversification. Farm diversification is likely to lead to a growth in the number of non-agricultural land-based enterprises and diversification of the income streams on individual farms. Current guidance on essential dwellings in the open countryside will be increasingly out of step with other areas of national policy if no allowance is made for diversified rural activities where there is a clear functional need for a worker to be resident on the holding.

8.30. In England, PPS 7 (2004) has embraced diversified enterprises in policy for essential dwelling (paras 3.35 – 3.37) and its wording provides a suitable model for Welsh policy. This wording makes it clear that the enterprise, and any associated development necessary for the operation of the enterprise, must be acceptable in planning terms and permitted in that rural location before consideration can be given to an application for an essential dwelling. The acceptability of the enterprise in its rural location must be the essential starting point.

Recommendation 2: There is a solid case for widening the current guidance for essential dwellings in the open countryside to apply to agricultural, forestry and other rural enterprises. New residential accommodation should only be permitted where the justifying rural enterprise is acceptable in planning terms and permitted in that rural location. The wording in the Annex to PPS 7: Sustainable Development in Rural Areas (2004) paragraph 15 provides a model set of words (see para 3.36 of this report).

Should the concession in planning for essential dwellings in the open countryside be made easier or more difficult?

- 8.31. Although representatives of the farming community have commented that the current guidance on essential dwellings is out of date, there is clear evidence that detailed scrutiny of individual applications remains essential to avoid abuse of this policy concession. If applied without reference to a common set of criteria the potential for inappropriate development in the countryside is considerable, especially in the face of escalating rural house prices, land fragmentation and a high percentage of land purchases by non-farmers. From this research it appears that the use of more stringent tests over the last five years has reduced abuse of this concession in planning, with the majority of recent applications across the local authorities reviewed relating to second dwellings on established farm units.
- 8.32. The tests set out in TAN (W) 6 paragraph 41 therefore continue to be appropriate for the assessment of new applications for essential dwellings in the open countryside. They are also equally valid for diversified enterprises.
- The functional test is essential to ensure that there is a need for a resident worker for the proper functioning of the enterprise(s).
 - The full-time test is essential to ensure that this need relates to a full-time worker who is fully or primarily employed or working on the justifying enterprise(s).
 - The financial test is essential to ensure the longevity of the justifying enterprise(s), otherwise a dwelling may be provided in support of an enterprise that soon disappears. This is of central importance if abuse of this concession in planning is to be avoided. It is also needed to identify the size of dwelling that the enterprise(s) can sustain, ensuring that the size of the dwelling is commensurate with its functional need and financial justification.
 - The other dwellings test is needed to ensure that there is no existing housing on the unit or in the locality that could meet the identified functional need.
 - Other normal planning requirements need to be met to ensure that the dwelling is suitably located to fulfil its functional need and to minimise impact on the wider landscape.
- 8.33. From this research, however, it is evident that there is considerable variation in how these tests are applied in practice. Consistency is important and will become all the more important as the range of justifying rural enterprises expands with rural diversification.

- 8.34. In addition, lpas need to be advised that a condition restricting the size of an essential dwelling commensurate with its functional need and financial justification, should be imposed on such dwellings at the outline application stage (para 6.52-6.57).

Recommendation 3: The current five tests set out in TAN (W) 6 paragraph 41 for the assessment of applications for new agricultural dwellings continue to be directly relevant and are equally applicable to diversified enterprises. These tests, however, require clarification to ensure greater consistency in their application.

Chapter 6 paras 6.18; 6.25; 6.40; 6.42-6.43; 6.49 and 6.50 set out suggested wording for each of the five tests to bring greater clarity. This wording is equally applicable to diversified activities. In turn, paras 6.72– 6.78 give specific consideration to how the tests should be interpreted for diversified enterprises, recognising the considerable variety of circumstances that are likely to be encountered.

Recommendation 4: The Welsh Assembly Government in association with the Welsh Local Government Association (WLGA), Planning Officers' Society and the Planning Inspectorate should work with Welsh local planning authorities to ensure greater consistency in the application of this area of policy.

Is there a case for less stringent application of the tests (TAN (W) 6 paragraph 41) in certain instances?

- 8.35. From this research, there are two scenarios where there may be a case for applying the five tests set out in TAN (W) 6 (41) more leniently. Both specifically relate to second dwellings on established enterprises, and seek to respond to the clear policy focus on supporting the traditional family farms of Wales. These are:
- in remote areas where, although there may not be a strict functional need for a second dwelling, there is a need for a second worker to be available to assist the enterprise manager with tasks requiring two people and in emergencies; and
 - where a member of the family, working part or full-time on the enterprise, is needed to be available at short notice with the intention that they will take on the enterprise at the retirement of the current enterprise manager, although again there is not a strict functional need for a second dwelling on the unit.
- 8.36. In both cases the issue hinges on the availability of other housing in the locality that is affordable, available and suitable to meet the identified need.
- 8.37. The latter situation particularly applies to the many applications identified through this research where two generations of the same family are currently both working on the unit, although within a few years the older generation will have retired from full-time farming. To all intents the proposed second dwelling is a retirement dwelling (clearly excluded as a justification for a dwelling in Planning Policy Wales) although it is also covering a period of handover and is helping ensure the succession of the enterprise.

- 8.38. Without doubt there will be significant social and economic advantages for the enterprise if the older or younger generation is able to build a dwelling and is not forced to purchase on the open housing market. In this sense, the provision of new dwellings attached to rural enterprises is one way of providing a form of lower-cost or subsidised new housing. There is, however, inevitable inequity in such an approach. While it may be appropriate to provide one additional dwelling to ensure the succession of the enterprise, it would be inappropriate (given the emphasis on controlling development in the open countryside) to provide for additional family members. This underlines the central importance of addressing affordable housing in rural areas which can also meet the needs of other essential rural workers such as teachers.
- 8.39. A very clear risk associated with allowing new dwellings in the above circumstances is that it could lead to a less strict policy approach being adopted in all circumstances, with an overall dilution of the strict restraint on new housing in the open countryside. This approach, therefore, needs to be considered with very great care, with any wording in guidance clearly defining the circumstances in which a less stringent approach might be adopted. **It also needs to be considered in tandem with a change in the wording and use of the occupancy condition,** considered separately below.
- 8.40. A potential form of words is as follows:

*There may be instances where there is no suitable and available accommodation in the locality but there is significant benefit in a worker being readily available although there is no essential need for the worker to be resident on the enterprise. In these circumstances an occupational dwelling may be considered but only so long as all of the following are met: the enterprise meets the financial test; the worker is pivotal to the success and sustainability of the enterprise; and all reasonable efforts have been made to secure suitable accommodation in the area over a reasonable period. This will only apply to second dwellings attached to an enterprise **and not to further dwellings.***

Suitability will relate to an assessment of the type, size, location and value of property in the area. Availability will relate to what property has been available on the open market over a reasonable period of time, which will in all cases be at least 1 year.

It must be demonstrated that the worker is critical to the continued success of the enterprise, and that the need cannot be met in any other reasonable way eg through the re-organisation of labour responsibilities. In such cases the dwelling will be tied to the holding by way of legal agreement.

Recommendation 5: On established enterprises that meet the financial test there may, on occasion, be a case for allowing a second dwelling where there is a need for full or part time assistance but there is no suitable and available accommodation in the locality. The wording of such a concession requires very considerable thought to ensure that it does not result in an overall dilution of the strict restraint on new housing in the open countryside (suggested wording has been provided above).

Should a temporary test be retained?

- 8.41. The requirement that enterprises should prove that they have been operating for at least three years prior to a permanent dwelling being permitted, was introduced in England in 1997 and in Wales in 1999 with the publication of Planning Guidance (Wales) Planning Policy First Revision. This guidance was subsequently expanded in TAN (W) 6 paragraphs 50–51. Under this guidance temporary residential accommodation (mobile home or temporary structure) should be provided for the first three years of a new enterprise to give the enterprise time to develop and prove that it can be economically sustainable.
- 8.42. There is evidence from the cases studied that this is an effective tool for assessing genuine cases, while not resulting in undue hardship for applicants.
- 8.43. It is concluded, therefore, that this guidance should be retained in any future revisions to TAN (W) 6. Furthermore, the current wording of the temporary dwelling tests is appropriate and can equally be applied to diversified enterprises. The only two changes that should be considered to provide further clarification are:
- The section should more appropriately be entitled “*new enterprises*” rather than “*temporary dwellings*” as its purpose is to provide a policy response to dwellings associated with new enterprises.
 - In the same vein, under test 50 (d) ‘*the other dwellings test*’ it may be appropriate to provide further clarification where new enterprises are proposed on established units, recognising the high proportion of second dwelling applications that are being received.

Recommendation 6: The current requirement that a temporary dwelling should be provided in the case of newly created enterprises, where the case for a dwelling is not completely proven, should continue and the current tests in TAN (W) 6 paragraph 50 retained. For clarity, however, this section should be retitled “New enterprises” and under test (d) it should be noted that “in the case of new enterprises on existing units it will need to be demonstrated why the functional need of the new enterprise cannot be met by existing dwellings on the holding, potentially with the reorganisation of existing labour and accommodation”.

Should the range of conditions and other guidance in TAN (W) 6 be retained?

- 8.44. Aside from the occupancy condition, which is considered separately below, TAN (W) 6 includes a range of other guidance, which can be followed at the Ipas’ discretion, to prevent land fragmentation and ensure that essential dwellings remain appropriate for the purpose for which they were constructed. These include:
- Consideration of the recent history of the holding [43] (paras 6.41, 6.43);
 - The removal of certain permitted development rights through condition [48] (para 6.57);

- Application of the occupancy condition to other properties on the holding [55];
- Tying the farm house to adjacent farm buildings or to the land of the unit to prevent subsequent fragmentation;
- Identification that security can only be considered in relation to animal welfare and cannot be considered in relation to plant, processing and products [44] (para 6.58).

8.45. The current use of this guidance is set out in paras 5.20 – 5.21. Whilst there was little debate or comment on the use of these forms of control during this research, they were included in TAN (W) 6 to guard against forms of abuse that had been clearly identified in previous research. As it remains imperative to continue to limit abuse of this concession in planning in the face of rising rural house prices and pressure on the rural housing stock from incomers, it is appropriate that these controls continue to be included in future guidance.

Recommendation 7: Current guidance in TAN (W) 6 aimed at limiting land fragmentation and ensuring that essential dwellings remain appropriate for the purpose for which they were constructed should continue, as a means of controlling abuse of this concession in planning.

Is there a case for altering the wording of occupancy conditions and how they are applied?

8.46. Through the consultations there was a suggestion that the occupancy condition should be dropped as is proposed in Scotland (para 3.38). This is not an appropriate way forward in Wales. With rapidly rising house prices and pressure on the rural housing stock, such a move would only serve to fuel property speculation and take housing further out of the reach of those in agriculture and other rural enterprises.

8.47. But, reflecting the policy emphasis on farm diversification and the lack of affordable housing for local workers, there is a strong case for a change in the wording of the agricultural occupancy condition such that it becomes a rural occupancy condition, with the wording of the condition expanded (para 7.13):

“The occupancy of the dwelling shall be restricted to those:

- a. working or last working in the locality in agriculture or forestry; or*
- b. working or last working on a diversified enterprise on the holding; or in the locality; where there is/was a defined functional need or*
- c. in or last in employment deemed by the local authority to be essential in the locality who would be eligible for consideration for affordable housing under the local authority’s housing policies; or*
- d. widows or widowers of the above, or any resident dependants.”*

8.48. This wording would be appropriate for dwellings associated with all forms of rural enterprise and, as argued by the CLA (para 6.63), would provide a form of local

needs policy by providing more affordable housing for essential employees. However, such a condition would need to be integrated with the broader approach to the provision of local needs housing being recommended by the Environment, Planning and Countryside Committee, with the development of a national framework by the Welsh Assembly Government to guide affordable housing policies at the local level, and with individual Ipas developing their own bespoke affordable housing policies (paras 2.49 –2.52).

Recommendation 8: The wording of the current agricultural occupancy condition should be broadened to become a rural occupancy condition that reflects the diversification of rural enterprises and the need to provide affordable housing to meet local needs. The wording of such an occupancy condition should be standardised to encourage consistency, with a recommended condition set out in any revision to TAN (W) 6 (suggested wording is provided above). At the same time it should be made clear in national guidance that this condition must operate within the national framework on local needs housing with individual Ipas developing their own bespoke affordable housing policies.

- 8.49. With this revised wording the need for the lifting of occupancy conditions should be largely removed as the market for the purchase or renting of essential dwellings will have been significantly broadened. In turn, the clear message that the occupancy condition will not normally be removed should act as a constraint on those seeking to use this concession in planning as a means of gaining a house in the country unrelated to a rural enterprise. Critically, by retaining the occupancy condition a small stock of more affordable housing is retained within the locality.
- 8.50. Furthermore, rather than lifting current agricultural occupancy conditions, policy should make it clear that where these can no longer be fulfilled or where enforcement action is taken for non compliance, the condition should be replaced by the revised wording rather than lifted, so retaining these dwellings within the restricted housing sector.

Recommendation 9: There should be a strong message in policy that rural occupancy conditions should not be lifted whilst there remains a need for local housing at affordable prices. Where applications are made for the lifting of current agricultural occupancy conditions, the condition should be replaced with the rural occupancy condition rather than, as at present, being taken out of the restricted sector through the lifting of occupancy conditions.

How can the operation of occupancy conditions be made more effective?

- 8.51. A key finding of this research is the current lack of monitoring of agricultural occupancy conditions. Without monitoring such conditions have little value and after a 10-year breach of occupation will be eligible for a Certificate of Lawfulness of Existing Use or Development (CLEUD). The same situation would equally apply were the suggested revision to the agricultural occupancy condition introduced. Such monitoring is essential to retain a stock of housing for rural workers at affordable prices. Lack of monitoring is not a new problem and was identified in the 1995 research into agricultural workers dwellings. Neither is it an easy problem to

overcome, requiring local planning authorities to establish a database of restricted properties and then to undertake regular monitoring.

- 8.52. A model for monitoring is provided by Swansea and some other Ipas that send out an annual questionnaire to all identified occupants of restricted dwellings. This questionnaire seeks information on how long the occupant has lived in the dwelling and their current and last occupation. This questionnaire would need to be modified in the light of any change in the wording of the occupancy condition but provides a relatively cheap means of monitoring occupancy. Such an approach is essential if the current trend of occupation in breach of the occupancy condition is to be reduced.

Recommendation 10: The Welsh Assembly Government, working with the WLGA and Planning Officers' Society, must ensure that all Welsh Ipas establish and maintain up to date records of those properties with agricultural / rural occupancy conditions and undertake annual monitoring of compliance with these conditions to prevent breach and subsequent loss of these properties from the restricted housing stock.

- 8.53. Again it must be stressed that none of these recommendations should be seen in isolation. They are all interlinked and the success of future policy will rest on the interplay between allowance for new dwellings and the operation and monitoring of occupancy conditions.

Land Use Consultants, Kernon Countryside Consultants and the Institute of Rural Sciences,
University of Wales.
January 2005

ANNEX

Wales Planning Research Programme

RESEARCH SPECIFICATION

Specification for: 'Essential Dwellings in the Open Countryside' research project

Contract Number: 250/2002

BACKGROUND

Wales Planning Research Programme

1. This research project is being commissioned as part of the Welsh Assembly Government's Wales Planning Research Programme (WPRP). The Programme has been established to meet the need for evidence based land use planning policy development within the context of the Assembly Government's principles and priorities.
2. Further information on the WPRP, and research in progress and published may be accessed at:
<http://www.wales.gov.uk/subiplanning/topics-e.htm#research>

Rural Planning Research

3. The Welsh Assembly Government, in liaison with its key partners, has set out its strategy for the future of the Welsh economy in 'A Winning Wales'. This 10-year strategy includes a commitment to support rural Wales and ensure that the actions set out in the document target rural areas appropriately. It recognises the need to develop new employment and business opportunities in rural areas, and proposes to:
 - implement the Rural Development Plan for Wales to conserve and improve the environment and enable farming, forestry and other rural businesses and communities to adapt to changing circumstances;
 - implement 'Farming for the Future' – a new direction for farming in Wales'.
4. Further to this, the development of the Wales Spatial Plan will set a clear framework for the development necessary for Wales to fulfil its ambitions for economic success as well as for social inclusion and a quality environment.
5. The following broad objectives reflect the Assembly's priorities in rural areas:
 - ensuring that local communities have sufficient good quality housing for their needs, including affordable housing for local needs and for special needs where appropriate;
 - securing a thriving and diverse local economy, where agriculture related activities are complemented by sustainable tourism and other forms of employment in a working countryside.

6. The Welsh Assembly Government's 'Farming for the Future' strategy document sets out a vision for the agricultural industry to achieve sustainability. The document outlines specific actions relating to rural areas, including a commitment to broaden the agricultural base to create a more diverse land-based economy, with a goal of helping farming families to generate sufficient income to give them a viable future in their rural communities.
7. The Welsh Assembly Government's national planning policy 'Planning Policy Wales' (PPW) was launched in April 2002 and provides the strategic policy framework for land use planning in Wales. It reflects the wider Assembly policies and initiatives for rural areas designed to meet the changing nature of the rural economy. The document contains specific guidance on the rural economy, particularly on encouraging farm and rural diversification and allowing new economic development within farm complexes in the open countryside. In particular, PPW recommends the preparation of integrated rural development strategies to facilitate diversification of the rural economy, and suggests that local planning authorities should adopt a constructive approach to rural development proposals, particularly those designed to meet the needs of changing farming practices. 'Planning Policy Wales' contains strict policies to control the building of new houses in the open countryside away from existing settlements.
8. Following publication of 'Planning Policy Wales' the technical guidance in the Technical Advice Notes (TANs) that supplement 'Planning Policy Wales' needs to be revised to bring it into line with the new policy direction. This research project will advise the revision of that part of Technical Advice Note 6 'Agricultural and Rural Development' which provides guidance on isolated residential development in the open countryside, both in terms of essential agricultural and forestry dwellings and agricultural occupancy conditions. This will ensure that the guidance in the TAN is compatible with the Assembly's planning and other policies and strategies for rural areas.

OBJECTIVES

9. The National Assembly for Wales, hereinafter called the Client, on behalf of the Welsh Assembly Government, requires the successful contractor to undertake a research project to:
 - review the Assembly's current guidance on agricultural and forestry dwellings and agricultural occupancy, with particular reference to the functional and financial tests
 - advise on the appropriateness of the guidance in the light of changes to the rural economy and current rural policy
 - assess in detail the adequacy of the operation of current controls including monitoring/enforcement
 - investigate alternative methodologies for assessing the need for essential new dwellings in the open countryside

10. The successful contractor will:
- examine the current technical planning guidance for control of new housing in the open countryside, as set out in TAN 6, with reference to the strategic planning and other policies of the Assembly;
 - establish how the planning system (planning guidance, planning conditions and obligations and other devices) could be used to enable the development of essential new housing in the open countryside, without detriment to the environment, local culture and other planning objectives. Particular attention will be needed to ensure that the Assembly's policy on the strict control of new housing in the open countryside is not adversely affected;
 - consider the scope for amending secondary legislation or technical planning guidance to encourage the more sustainable provision of essential housing in the countryside that meets current needs of rural areas, and
 - make recommendations on the need for and nature of any proposed changes.

METHODOLOGY AND SCOPE

11. The Client requires tenderers to propose an appropriate methodology for the study. The rationale for the study should be clearly stated, as should its ability to meet the requirements of the project and to deliver the required outputs within the specified time frame.
12. It is expected that the methodology will include, but not be limited to:
- i) a review of existing literature and data, including any comparable policies, guidance, research and recommendations on good practice in other parts of the UK;
 - ii) an investigation of the Assembly's current and emerging planning policy guidance for new essential housing development in the open countryside and agricultural occupancy, in terms of assisting in the delivery of other Assembly policies and priorities for rural development;
 - iii) an investigation of a stratified sample of Welsh local planning authorities' development plans and development control decisions, to assess the effectiveness of policies and planning decisions at the local level;
 - iv) conducting structured interviews with a range of bodies at national and local level including Assembly Divisions, local planning authorities (planning, housing and economic development departments), RTPI, RICS, House Builders' Federation, Federation of Small Businesses, Farming Connect, FUW, NFU, Forestry Commission, Coed Cymru, CPRW, community groups, National Federation of Housing Associations in Wales, etc
 - v) a number of case studies to investigate the effect of essential dwellings on the rural economy and environment in different types of settlement in different areas of Wales;

vi) a report on the findings of i to v above, including recommendations for any revision to secondary legislation or planning guidance. It should also provide examples of good practice.

KEY SOURCES OF INFORMATION

13. Key policy documents:

'Plan for Wales 2001'
'Farming for the Future' (2001)
'A Winning Wales' (2002)
'Planning Policy Wales'(2002)

14. Other useful source documents include:

'Technical Advice Note (Wales) 6, 'Agricultural and Rural Development'
'Better Homes for the People of Wales' (2001),
'Farm Diversification and the Planning System' Research Report (2001)
'Second and Holiday Homes and the Land Use Planning System' Research Report (2002)
'The Rural Economy and the Planning System' Research Report (2002)

All these documents may be viewed on the Client's web site www.wales.gov.uk

PRODUCTS

15. The Client will require 1 unbound and 250 copies of the final report (to be costed provisionally, although the client may or may not accept this part of the bid). The final report should not exceed 40,000 words (excluding Annexes), should be fully proof read and produced by the completion date of the contract. It will include a free-standing Executive Summary of not more than four sides of A4. The Final Report and Executive Summary should be produced bilingually (English and Welsh) 'back to back'. All text to be in *Word*, *HTML* and *PDF* formats (format to be agreed). A copy of the Planning Division's Guide for the Production of Documents for the Internet / Intranet is attached as Appendix 1. The researchers will also provide a bilingual summary of the project and its principal findings suitable for publication on the Internet. It should be of no more than 100 words, summarising the final report. The Welsh versions should be translated by a translator listed in the Welsh Language Board's Directory of Welsh Translators. A standardised cover design is available for all research reports commissioned through the Wales Planning Research Programme. A copy of the cover design will be provided electronically to the successful contractor.
16. Where tenderers consider that additional work to that specified should be undertaken then this should be specified and priced clearly and separately.

All reports should be written in Plain English.

19. *The Client will require the researchers to organise a seminar at completion of the project to disseminate the results. The researchers will issue invitations to a list of organisations and individuals to be agreed with the Steering Group. A copy of any presentational materials used in the dissemination seminar and workshops will be required for retention by the Client.*

WELSH LANGUAGE SCHEME

20. *It is the Client's opinion that the National Assembly for Wales' Welsh Language Scheme could apply in relation to this contract. It may be necessary for some of the project to be conducted through the Welsh medium e.g. interviews and questionnaires, particularly in those areas where the majority of the population's first language is Welsh. Copies of the final report will also be required in Welsh and English. The successful contractor will therefore need to ensure that services to be provided through this contract are compliant with the scheme. A copy of the scheme can be found at: www.wales.gov.uk/subculture/content/wellangschm.pdf*

Translation Rates

21. Any translation work (English-Welsh or Welsh-English) required under this contract will be paid at a maximum of the Client's rates – a copy is attached at Appendix 3.

OVER RELIANCE RULE

22. The National Assembly wishes to encourage fairness and consideration of suppliers when contracting with organisations. It is therefore our policy that when awarding contracts the financial status of an organisation is considered in order to avoid organisations becoming overly reliant on our business. Contracts would not be awarded if for the purchase of goods a contract exceeds 25% of a supplier's turnover; or for the purchase of services a contract value exceeds 40% of a supplier's turnover. for this purpose would tenderers please provide the following information with their tender:- details of turnover and the accounting period to which it relates, and whether they are a small or medium enterprise (if they have under 500 employees).

CONTRACT AWARD CRITERIA

23. All bids will be evaluated against the following criteria:
- Application of the over reliance rule
 - Quality of proposal to meet the requirement
 - Ability to fully meet the timescales
 - Qualifications, demonstrated competency and relevant experience of Researcher(s) to undertake the project in accordance with the objectives of the research
 - Value for Money.

24. Tenderers may be invited to make a presentation in support of their tender at the Client's offices at Cathays Park, Cardiff. A provisional date for this has been arranged (see Timetable on page 5).

Research Skills Required

25. The appointed researchers will have a thorough knowledge of the planning system as it applies to Wales, a detailed understanding of planning and rural policies and initiatives and an awareness of current sources of information on land use in Wales. They will need to demonstrate these skills by reference to their recent research track record and will also need to demonstrate good presentational skills to produce practical advice in a clear, succinct and user friendly way with a minimum of technical jargon. The researchers must take into account the need for clarity and inclusiveness in working.
26. The appointed researchers must take into account the need to produce practical and realistic proposals and will be mindful of the Client's requirement to be inclusive in the way it conducts its business.

CLIENT'S CONTACT POINT

27. The Contract Manager for the Client will be **Peter Roberts** within the Planning Division of the Welsh Assembly Government.
28. The Contract Manager will be the point of contact for the Contractor during the course of the contract. He may elect to meet a named representative of the Contractor as and when necessary to discuss any issues that may have arisen during the provision of the service.
29. A Steering Group will be convened to oversee the project with representatives being drawn from within and outside of the Welsh Assembly Government. The Steering Group will monitor progress and provide guidance on objectives, output and information needs on technical and analytical matters. The appointed researchers will be expected to provide administrative and secretarial support for the Steering Group meetings and within 5 working days of each meeting to prepare a draft record for approval by the contract manager prior to dispatch to the Steering Group. They will also be required to email the reports specified under 'Timetable' on page 5 to the Steering Group members at least 3 days before the Steering Group meeting.

Contractor's Personnel

30. Tenderers should provide the names of personnel to be assigned to the contract, brief CVs, their status in the organisation, their previous experience of dealing with contracts of a similar nature and their specific input into the study in terms of days and rates. A Research Price Schedule is attached for this purpose (Appendix 4). Tenderers should also give details of a nominated contact point.
31. In the event of non-compliance with the Specification, the following procedure will be followed:

- notification of complaint and requirement to comply;
- notification of unacceptable practices and/or substantial non compliance to the Specification of the services;
- recourse to the conditions of contract.

Changes to the Specification

37. This specification document sets out the Client's current service requirement. It is possible that during the life of the contract changes, for example, in the nature and volume of the work and the timescale or other requirements will arise. Changes to the Specification will be implemented by issuing written amendments to all those affected by the changes.

Ownership

39. Ownership of all research data and findings will rest with the Assembly, though the publication of findings in academic journals may be allowed by agreement. Such agreement will not be unreasonably withheld. No data or findings may be used prior to the publication of the report by the Assembly.