

**Item No 04:-**

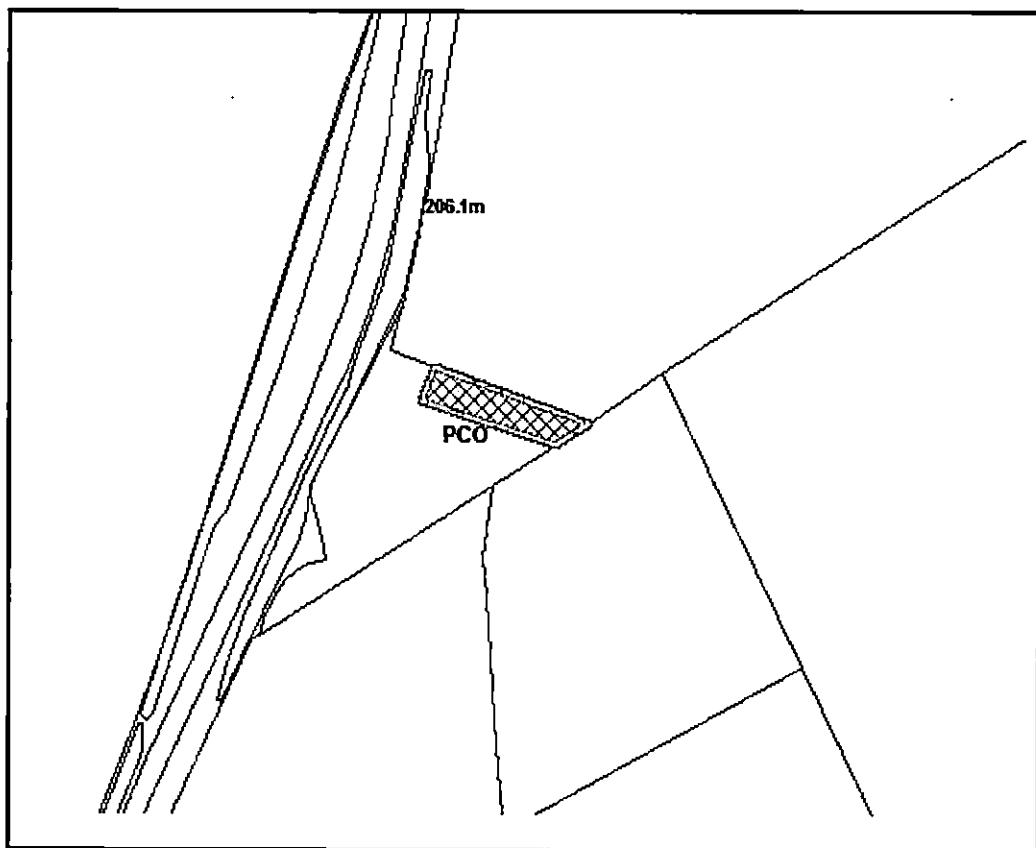
**15/03931/FUL (CD.8481/J)**

**The Old Quarry  
Broadwell  
Gloucestershire**

**Proposed permanent rural workers dwelling at  
The Old Quarry  
Broadwell**

<b>Full Application 15/03931/FUL (CD.8481/J)</b>	
Applicant:	Edward Gilder & Co
Agent:	Moule & Co Ltd
Case Officer:	Scott Britnell
Ward Member(s):	Councillor Julian Beale
Committee Date:	13th April 2016

**Site Plan**



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**RECOMMENDATION: REFUSE**

## Main Issues:

- (a) The principle of the development
- (b) The scale, design and location of the proposed rural workers dwelling
- (c) The living conditions of future occupants of the development
- (d) Drainage
- (e) Potential Contamination
- (f) The living conditions of occupants of any nearby residential dwelling
- (g) The impact upon the Broadwell Conservation Area and Listed Broadwell Manor
- (h) The impact upon the AONB
- (i) The impact on highway safety and the local road network

## Reasons for Referral:

This application has been referred to committee by Councillor Beale so that members can assess the need for the development and its impact upon the Area of Outstanding Natural Beauty.

### 1. Site Description:

The application site, The Old Quarry sits in the Cotswold Area of Outstanding Natural Beauty (AONB) with the Broadwell Conservation Area sited approximately 750 - 800 metres to the east.

Located within the Fosseridge Ward, The Old Quarry is accessed via a sloping entrance to the west, which meets the Fosse Way. To the north, east and south the site is surrounded by wooded areas and open countryside. The site benefits from planning permission to be used as a lairage (a place where cattle and sheep may be rested on their way to market or slaughter) in association with the applicant's haulage business.

### 2. Relevant Planning History:

- 12/01922/FUL - Permitted - Retention of residential caravan for overnight accommodation for stockperson and erection of lairage building (dated 17 July 2012).
- 15/00984/FUL - Permitted - Improved access (part retrospective) (Dated 13 July 2015).
- 15/00289/FUL - Permitted - (Retrospective) Erection of an agricultural muck store (dated 9 December 2015).
- 15/03075/FUL - Permitted - Erection of general purpose building for use as agricultural lairage and associated fodder storage (dated 9 December 2015).
- 15/03100/FUL - Concurrent full planning application for the retention of residential caravan for overnight accommodation for stockperson.

### 3. Planning Policies:

- LPR05 Pollution and Safety
- LPR15 Conservation Areas
- LPR19 Development outside Development Boundaries
- LPR24 Employment Uses
- LPR38 Accessibility to & within New Development
- LPR42 Cotswold Design Code
- LPR46 Privacy & Gardens in Residential Development
- NPPF National Planning Policy Framework

### 4. Observations of Consultees:

Comments have been received from the following consultees: -

Highways: No objection

Waste: No objection

Drainage: No objection subject to details in respect of a full water drainage scheme, any areas of permeable paving to be used and the inclusion of water butts. A condition is recommended to cover this matter.

Public Protection Officer (Noise): No objection subject to the following condition; "Prior to occupation a scheme shall be submitted to and approved in writing by the Local Planning Authority to provide that the dwelling is designed and constructed so as to ensure that noise does not exceed 35dBLAeq16hours between 07.00 and 23.00 hours, in all living areas and 30dBLAeq8hours 23.00 and 07.00 hours in any bedroom with windows closed and alternative means of ventilation provided."

Design Officer: Response incorporated into "Officers Assessment"

Environmental Health (Contamination): Response incorporated into "Officers Assessment"

Landscape Officer: Response incorporated into "Officers Assessment"

## **5. View of Town/Parish Council:**

The Parish Council object to the proposals on the following grounds: -

- i) Design and size of the dwelling
- ii) The prominence of the dwelling and its impact on the AONB
- iii) Highway access and parking
- iv) Impact on the Broadwell Conservation Area
- v) Trees and landscaping
- vi) Insufficient evidence submitted that this is a growing or viable business
- vii) Insufficient evidence that the business operates from the site to the extent claimed

## **6. Other Representations:**

13 comments of support have been received for this application.

27 separate comments of objection have been received. In addition, a statutory declaration has been submitted by a neighbour to the site and 3 Legal Opinions have been received.

The grounds for objection are summarised as follows: -

- i) The size of the dwelling
- ii) The design of the dwelling
- iii) The dwelling is out of character with its surroundings
- iv) Impact on the Grade II Listed Broadwell Manor
- v) Impact on the AONB
- vi) Impact on the Broadwell Conservation Area
- vii) Highway safety
- viii) Insufficient evidence of the business use on this site
- ix) No financial information has been provided
- x) Insufficient evidence that there is a financial or functional need for the dwelling
- xii) There has been very little evidence of animals on site and so no need for the dwelling
- xii) The supporting statements do not indicate a high level of animals moving through the site
- xiii) The dwelling is clearly intended for family use
- xiv) This is an unsustainable location for a family dwelling
- xv) The application is a subversion of the planning system with a long term aim of building a more substantial house on the site
- xvi) The dwelling should not be allowed as it has already been built - if approved other buildings will be constructed without planning permission

Three legal opinions raise a number of issues. These are appended to the report.

### **7. Applicant's Supporting Information:**

Design and Access Statement incorporating Water Management Statement, Planning Statement & Appraisal of agricultural business, Supplementary Design Information, Additional Design Commentary. These are available for members to review prior to committee.

### **8. Officer's Assessment:**

#### **The Proposals**

The application proposes a single storey permanent rural workers dwelling to be occupied in relation to the existing lairage business. The dwelling has already been largely completed and so the application is effectively part retrospective.

The building would have a width of approximately 20 metres with a depth of 6.5 metres. The ridge would sit just over 4.5 metres high with eaves at 2.5 metres. Internally the dwelling would yield a combined living/kitchen area, 4 bedrooms and a bath room. The elevations would be finished in horizontal timber weather boarding (in brown) and the roof tiled with dark grey tiles punctuated by a single roof light. Doors and windows would be double glazed and framed in timber.

The dwelling would be located along the north boundary of the site with access via the existing approved entrance. An area of the site immediately to the east and north of the proposed dwelling would be given over to the building's residential curtilage.

#### **(a) The principle of the development**

Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires planning decisions to be made in accordance with the development plan unless material considerations indicate otherwise. The development plan is therefore the starting point. In this case the development plan is the adopted Cotswold District Local Plan 2001 - 2011 and is referred to herein as the 'Local Plan'.

As shown on the Proposals Map to the Local Plan, the application site is located outside of an adopted development boundary. The correct local policy to apply in terms of the principle of the proposed development is therefore Local Plan Policy 19 (Development Outside Development Boundaries).

Local Plan Policy 19 is positively written in that it supports development appropriate to a rural area provided that the proposals relate well to existing development, meets the criteria set out in other relevant local plan policies and results in development that does not significantly compromise the principles of sustainable development. However, Local Plan Policy 19 does explicitly exclude the development of new-build open market housing outside of adopted development boundaries.

The NPPF is a material consideration in the determination of planning applications. The NPPF requires planning decisions for housing to be considered in the context of the 'presumption in favour of sustainable development' (NPPF, paragraph 14 and 49).

Paragraph 14 of the NPPF states that in decision taking the presumption in favour of sustainable development means:

approving development proposals that accord with the development plan without delay; and

where the development plan is absent, silent or relevant policies are out-of-date, granting planning permission unless:

- any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework, taken as a whole, or
- specific policies in this Framework indicate development should be restricted. (Guidance in this respect is provided by footnote 9)

With regard to footnote 9 (page 4 of the NPPF), the site is within the Cotswolds Area of Natural Beauty. There are therefore specific policies in the NPPF that indicate that development should be restricted. A recent High Court Decision in March this year between Forest of Dean District Council, the Secretary of State for Communities and Local Government and Gladman Development Ltd confirmed that the first consideration should be given to the impact on heritage assets and the Area of Outstanding Natural Beauty and if it is considered that there is harm, planning permission should be refused unless public benefits outweigh that harm.

The NPPF states that "there are three dimensions to sustainable development: economic, social and environmental. These dimensions give rise to the need for the planning system to perform a number of roles". These are an economic role whereby it supports growth and innovation and contributes to a strong, responsive and competitive economy. The second role is a social one where it supports "strong, vibrant and healthy communities, by providing the supply of housing required to meet the needs of present and future generations". The third role is an environmental one where it contributes to protecting and enhancing the natural, built and historic environment. Paragraph 8 of the NPPF states that the three "roles should not be undertaken in isolation, because they are mutually dependent". It goes on to state that the "planning system should play an active role in guiding development to sustainable solutions."

It is the Council's position that more than limited weight can be accorded to Local Plan Policy 19 in the specific circumstances of this case. For clarity and confirmation, this application is not for new-build open market housing and so the positive elements of the policy, those that relate to other (non new-build open market housing) remain relevant.

Paragraph 55 of the NPPF states to promote sustainable development in rural areas, housing should be located where it will enhance or maintain the vitality of rural communities. For example, where there are groups of smaller settlements, development in one village may support services in a village nearby. Local planning authorities should avoid new isolated homes in the countryside unless there are special circumstances such as:

- \* the essential need for a rural worker to live permanently at or near their place of work in the countryside; or
- \* where such development would represent the optimal viable use of a
- \* heritage asset or would be appropriate enabling development to secure the future of heritage assets; or
- \* where the development would re-use redundant or disused buildings and
- \* lead to an enhancement to the immediate setting; or
- \* the exceptional quality or innovative nature of the design of the dwelling.

Such a design should:

be truly outstanding or innovative, helping to raise standards of design more generally in rural areas;

- \* reflect the highest standards in architecture;
- \* significantly enhance its immediate setting; and
- \* be sensitive to the defining characteristics of the local area.

Planning Policy Statement 7 (PPS7): Sustainable Development in Rural Areas, and the other PPS's were superseded by the introduction of the National Planning Policy Framework (NPPF) in March 2012. However, Annex A of PPS7 which outlines the criteria that local planning

authorities (LPAs) should apply when determining planning applications for rural worker's dwellings is still considered to be relevant. A recent appeal decision from January 2016 (ref: APP/J3720/W/15/3133183) confirmed that PPS7 Annex A is still applicable:

"The Framework itself contains no guidance on how to determine essential need for a rural worker to live at or near a site. However, although no longer government policy, Annex A of Planning Policy Statement 7: Sustainable Development in Rural Areas (PPS7), sets out a useful, tried and tested methodology for assessing whether there is an essential need for a rural worker's dwelling on a holding. I see no reason to discount it as a useful tool in seeking to establish whether a permanent dwelling is justified".

Further, Annex A has been used to form an informal guidance note by this LPA (approved by Cabinet on 3 May 2012) for consideration to inform decisions on applications for agricultural/occupational buildings - this is referred to as Appendix A.

Appendix A states that one of the few circumstances in which isolated residential development may be justified is when accommodation is required to enable agricultural, forestry and certain other full-time workers to live at, or in the immediate vicinity of their work. Cases that may qualify is where the nature and demands of the work concerned make it necessary for one or more people engaged in the enterprise to live at, or very close to, the site of their work.

Paragraph 15 of Appendix A relates to Other Occupational Dwellings. This states that there may 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 associate dwelling. LPAs should apply the same stringent levels of assessment to applications for new occupational dwellings as they apply for agricultural and forestry workers' dwellings - paragraphs 3 - 11 of the Appendix.

Paragraph 3(i) of Appendix A states that new permanent dwellings should only be allowed to support existing agricultural activities on well-established agricultural units if there is a clearly established existing functional need. Paragraph 4 explains the circumstances that might arise whereby the functional test can be met, this includes where animals require essential care at short notice.

Paragraph 3(ii) stipulates that the need must relate to a full-time worker.

Paragraph 3(iii) states that the unit and activity must 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. Paragraph 8 sets out the test to be applied.

Paragraph 3 (iv) stipulates that the functional need could not be fulfilled by another existing dwelling on the unit, or any other existing accommodation in the area which is suitable and available for occupation by the workers concerned.

Paragraph 3 (v) states that other planning requirements, e.g. in relation to access, or impact on the countryside, are satisfied.

A report has been prepared by Fox Rural Planning & Land management (hereafter referred to as the Fox Report) on behalf of the Council to assess the need for the proposed dwelling. This refers to the LPA's informal guidance, "Appendix A", and indicates that such a dwelling would need to be justified as essential, based on such matters as a functional need and financial tests.

### Functional Need

Paragraph 5.1 of the Applicant's Planning Statement states that the business provides two distinct services at the application site (lairage and procurement) and both require the short term

accommodation of potentially vulnerable and high value livestock. The Planning Statement continues to explain the legislative requirement for animals to be rested on journeys that are longer than 8 hours.

At Paragraph 5.4 it is stated that the business generally operates 24 hour rest breaks with feed and watering facilities. Paragraphs 5.5 and 5.6 explain that loads of livestock may arrive at the site any time of day or night. An experienced stockperson must be on site at these times to help with the loading/unloading of livestock and to monitor animal welfare.

During the course of this application Fox Planning met with the applicant and was provided with documents to demonstrate the use of the site. This consisted of records of sheep passing through the site in 2013, 2014 and 2015, movement records and births, movements and death records.

Pages 3 - 4 of the Fox Report sets out the general context of the use of the site noting that the throughput at the lairage is now over 10,000 animals per annum and involves work at all hours and the majority of the year.

Paragraph 4.01 establishes the functional need for the dwelling. This states that the most frequent reasons for a functional need for a rural worker to be permanently based on a site is so that there is somebody experienced to be able to deal quickly with emergency animal welfare issues that are likely to arise throughout the majority of the year and during the middle of the night.

Based on the large numbers of livestock involved with the lairage and the fact that they will have come from the farm or a livestock market, and are likely to be stressed, there is bound to be times when urgent action is necessary for welfare reasons. That these incidents can occur at any time and throughout the year translates into there being a functional need for an experienced stockperson based at the site.

Paragraph 4.02 indicates that the functional need would relate to a full-time person in this case. At paragraph 4.04 it is stated that there is no other accommodation available that would provide the functional need as a dwelling would need to be on site, i.e. within easy walking distance of the animals.

Notwithstanding the counter arguments being put forward by objectors, officers conclude that the functional need for a dwelling on the site has been proven and the application complies with The LPA's advice entitled Appendix A and Paragraph 55 of the NPPF.

However, to be in accordance with Local Plan Policy 19 any permission would need to secure through condition a requirement that the occupation of the dwelling is connected solely to the enterprise being carried out at the site. For avoidance of doubt the application is not for an open market dwelling but a rural workers dwelling associated with the lairage aspect of the applicant's haulage business. An open market dwelling in this location would be unsustainable, unacceptable and would fail to comply with this policy.

#### Financial Test/Viability

Paragraph 4.03 of the Fox Report, states that the business is clearly viable and sustainable and likely to remain so. Following receipt of Legal Opinion 1 on behalf of one of the objectors Fox Rural Planning produced a second report. In this it is stated that "the business is livestock haulage of which the lairage facility is part. I am happy with the evidence I have seen that the haulage business is viable."

Fox Planning has also been furnished with Unaudited Financial Statements for both Edward Gilder and Co Ltd and Edward Gilder and Sons Ltd for 2012, 2013 and 2014. A 3 year combined account summary (for both) covering the same period has also been provided. Fox Planning has

confirmed that the accounts indicate a business that is in good shape and likely to remain viable for the foreseeable future.

It is adjudged that the financial test has been satisfied.

The principle of a permanent rural workers dwelling is considered to have been proven and the application, in this respect, complies with Local Plan Policy 19 and Paragraph 55 of the NPPF.

**(b) The size, design and location of the proposed rural workers dwelling**

Section 6 of the NPPF refers to the delivery of a wide choice of high quality homes, while Section 7 iterates the importance of good design.

Paragraph 28 states that planning policies should support economic growth in rural areas including; supporting growth and expansion of all types of business and enterprise in rural areas both through conversion of existing buildings and well-designed new buildings.

Paragraph 56 of the NPPF advised that "good design is a key aspect of sustainable development, is indivisible from good planning". Paragraph 58 states that development should "respond to local character and history, and reflect the identity of local surroundings and materials, while not preventing appropriate innovation". Paragraph 60 states that local distinctiveness should be promoted or reinforced and Paragraph 61 that connections between people and places, with the integration of new development into the built and historic environment.

Local Plan Policy 19 states that development outside development boundaries would not be supported if it would cause significant harm to existing patterns of development.

Local Plan Policy 24 refers to employment uses. At paragraph 6 it is confirmed that new buildings and structures that are required for, and directly related to, an existing business will be permitted provided the development is designed to avoid visual harm and does not extend beyond the existing site into adjacent countryside.

Local Plan Policy 42 advises that development should be environmentally sustainable and designed in a manner that respects the character, appearance and local distinctiveness of the Cotswold District with regard to style, setting, harmony, street scene, proportion, simplicity, materials and craftsmanship. The Cotswold Design Code offers further guidance.

The proposed dwelling has a linear emphasis with a ridge height of approximately 4.5 metres. The footprint of the building is approximately 130 square metres and would provide 4 separate bedrooms, a living/kitchen area and separate bathroom.

The applicant has provided 4 supplementary documents. Within these, reference is made to a number of consents that have been issued by this LPA over the past few years. Officers are reviewing these documents and the consents that have been referenced. An update will be provided prior to Committee if it is found that any of these decisions have a material impact on the assessment of this application.

The applicant also contends that it is unreasonable for the LPA to expect a rural worker to reside at the site without his/her family and the space to entertain visitors.

The LPA's guidance entitled Appendix A directs that dwellings should be of a size commensurate with the established functional requirement. It also states that it is the requirements of the enterprise, rather than those of the owner or occupier, that are relevant in determining the size of a dwelling.

It is considered that a smaller dwelling could adequately provide sufficient space for the functional need of the site to be met. Notwithstanding this, having adjudged that there is a functional need for someone to be on site permanently it would normally be unreasonable to restrict the size of

the dwelling to accommodate just a single person. However, the LPA must remain mindful that the scale and impact of the dwelling must reflect the functional need and financial viability of the use of the unit and respects the constraints resulting from the site being within the AONB.

With regards to the design and form of the dwelling it is adjudged that this fails to respect the context of the site and wider area. While the applicant suggests that the dwelling is of an agricultural appearance, it is officers' opinion that it represents a prefabricated alpine-chalet structure. There is little about the form, design or materials that make any reference whatsoever to local character or distinctiveness. The development would therefore fail to comply with Paragraphs 28, 56, 58 and 60 of the NPPF and Local Plan Policies 19, 24 and 42.

Further, the dwelling would be located in open countryside within the AONB and occupying a ridge line position. Given its unacceptable form, design and use of materials the development would fail also to comply with Paragraph 115 of the NPPF in that it does not conserve the landscape and scenic beauty of the AONB (this is explored in further detail at Section h of this report). In accordance with paragraph 115 the LPA is required to give great weight to this consideration.

#### **(c) The living conditions of future occupants of the development**

NPPF Sections 6, 7 and 11 are relevant in considering the appropriateness of development in terms of its impact upon future occupants. Local Plan Policies 5, 19, 42 and 46 are also relevant.

The proposals would provide sufficient in-door and outdoor space in the form of a modest residential curtilage. Domestic waste could be stored within the proposed curtilage of the dwelling and collected the public highway.

The Public Protection (Noise) Officer has no objection subject to the condition set out at earlier in this report.

#### **(d) Drainage**

The Council's Drainage Officer has no objection to the development subject to full details being submitted with regards a full surface water drainage scheme, indication of any permeable paved areas and the inclusion of water butts. A condition is recommended to cover this matter if the application is approved.

#### **(e) Potential Contamination**

Paragraph 120 of the NPPF states that "to prevent unacceptable risks from pollution and land instability, planning policies and decisions should ensure that new development is appropriate for its location. The effects (including cumulative effects) of pollution on health, the natural environment or general amenity, and the potential sensitivity of the area or proposed development to adverse effects from pollution, should be taken into account. Where a site is affected by contamination or land stability issues, responsibility for securing a safe development rests with the developer and/or landowner".

Local Plan Policy 5 advises that planning permission will not be given for development that "would result in an unacceptable risk to public health or safety, the environment, general amenity or existing land uses because of its location or due to the potential pollution of air, water, land or sky" Given the potential uses that the site could have been put to, a ground investigation has been undertaken in accordance with a request from the Council's Environmental Health Officer (EHO). This took the form of a Phase 1 Environmental Assessment comprising desk study and site reconnaissance. In response to the findings of that Assessment the EHO has advised that a Phase 2 Intrusive Ground Investigation is required. That report has only just been received and is with the EHO to consider. An update will be provided prior to the Committee meeting.

**(f) The living conditions of occupants of any nearby residential dwelling**

Given the distance from the site to the nearest residential property, approximately 750 metres, no adverse impacts resulting from the proposed development has been identified. The application is therefore considered to comply with section 7 of the NPPF and Local Plan Policies 42 and 46.

**(g) The impact upon the Broadwell Conservation Area and Grade II\* Listed Broadwell Manor**

Given the distance from the site to the nearest part of the Broadwell Conservation Area (approximately 750 metres) no adverse impacts resulting from the proposed development has been identified. Further views of the site, to and from the conservation area, would not be significant.

One of the objections referred to the potential harm that could be caused to the setting of a Grade II Listed Building, Broadwell Manor. Given the separation that exists between the two sites it is not considered that the proposals would affect the setting of this heritage asset.

The proposals therefore comply with Local Plan Policy 15 and 42 and Sections 7 and 12 of the NPPF.

**(h) The impact of the development upon the AONB**

Paragraph 115 of the NPPF states that great weight should be given to conserving landscape and scenic beauty in National Parks, the Broads and Areas of Outstanding Natural Beauty, which have the highest status of protection in relation to landscape and scenic beauty. Paragraph 17 states that the planning system should recognise the intrinsic character and beauty of the countryside.

Section 7 of the NPPF requires good design. Paragraph 58 states that decisions should ensure that developments: function well in the long term and add to the overall quality of an area; establish a strong sense of place, creating attractive and comfortable places; and respond to local character and history, reflecting the identity of the surroundings and materials; are visually attractive as a result of good architecture and landscaping.

Section 11 of the National Planning Policy Framework encourages the conservation and enhancement of the natural environment. Paragraph 109 states that the planning system should protect and enhance valued landscapes.

The site is located within the Cotswolds Area of Outstanding Natural Beauty (AONB) approximately 1.5km north of the town of Stow-on-the-Wold and less than 1km from the village of Broadwell in the Cotswolds AONB. Section 85 of the Countryside and Rights of Way (CROW) Act 2000 states that relevant authorities have a statutory duty to conserve and enhance the natural beauty of the AONB.

The proposal is for a permanent rural workers dwelling. The dwelling would be a single storey, chalet style structure with a total internal area of 113m<sup>2</sup> and associated amenity space, contained by post and rail fencing. The dwelling would provide three/four bedrooms.

The site is located adjacent to the Fosse Way and is fairly well contained by existing vegetation. The screening provided by vegetation and partial screening provided by the existing and permitted agricultural buildings is used to justify the erection of a new dwelling. However, there are concerns as to how this vegetation would be managed and protected in the longer term. The trees that provide partial cover to the rear of the site are not within the applicant's land. The site is in an elevated position and if this planting was removed it would be visible from a number of vantage points.

The vegetation along the Fosse Way is a single line of conifer trees; this planting is fairly short lived and not characteristic of the Cotswold District, we would rather see this type of planting removed and replaced with native planting. However, if these trees were removed this would result in a negative visual impact to users of the Fosse Way.

While there are existing and permitted agricultural buildings on the site, this is what you would expect to see in a rural location. The scale, design and materials of the proposed dwelling do not respect the character and appearance of Cotswolds; in addition the domestic curtilage and associated paraphernalia would result in a negative and visual impact on the agricultural landscape and the Cotswolds AONB (although if approved, the LPA could remove permitted development rights to overcome this last issue).

The site and the wider landscape falls within character area 15B Farmed Slopes and is further refined as Vale of Moreton Farmed Slopes (Landscape Strategy and Guidelines for the Cotswolds AONB). The site and the surrounding countryside typify this type of landscape.

The Cotswold Conservation Board has identified "ad hoc housing development such as new single dwellings" and "isolated development" as a local force for change. The potential implications are "visual intrusions introduced into the landscape", "introduction of 'lit' elements to characteristically dark landscapes" and "suburbanisation of agricultural landscape".

For the dwelling with its scale and design, to occupy an isolated, rural position would be an incongruous feature and detract from the landscape setting. It is adjudged that the proposal is inappropriate and does not respond to the rural context and would, therefore, have a negative impact on the character of the Cotswolds AONB. This would be contrary to paragraph 115 of the NPPF

Further, it is considered that the new dwelling, by virtue of its form, design and materials, fails to reflect the character or local distinctiveness of the district. Whilst there may be an economic benefit from a rural worker's dwelling in this location, this benefit is not dependent upon such an inappropriate design. Consequently, the proposal also conflicts with paragraphs 28, 56, 58, 60 of the NPPF and Local Plan Policies 19, 24 and 42 of the Local Plan.

#### **(i) The impact on highway safety and the local road network**

Local Plan Policy 38 refers to accessibility to and within development. Details of a turning head have been provided, which demonstrates that the proposals can be safely accommodated taking into account the vehicle movements required in connection with the recently approved muck store and lairage/general storage building. The Highways Officer has considered the details submitted, including the turning head, and has offered no objection to these proposals. These details can be secured by condition if the application is approved.

#### **9. Conclusion:**

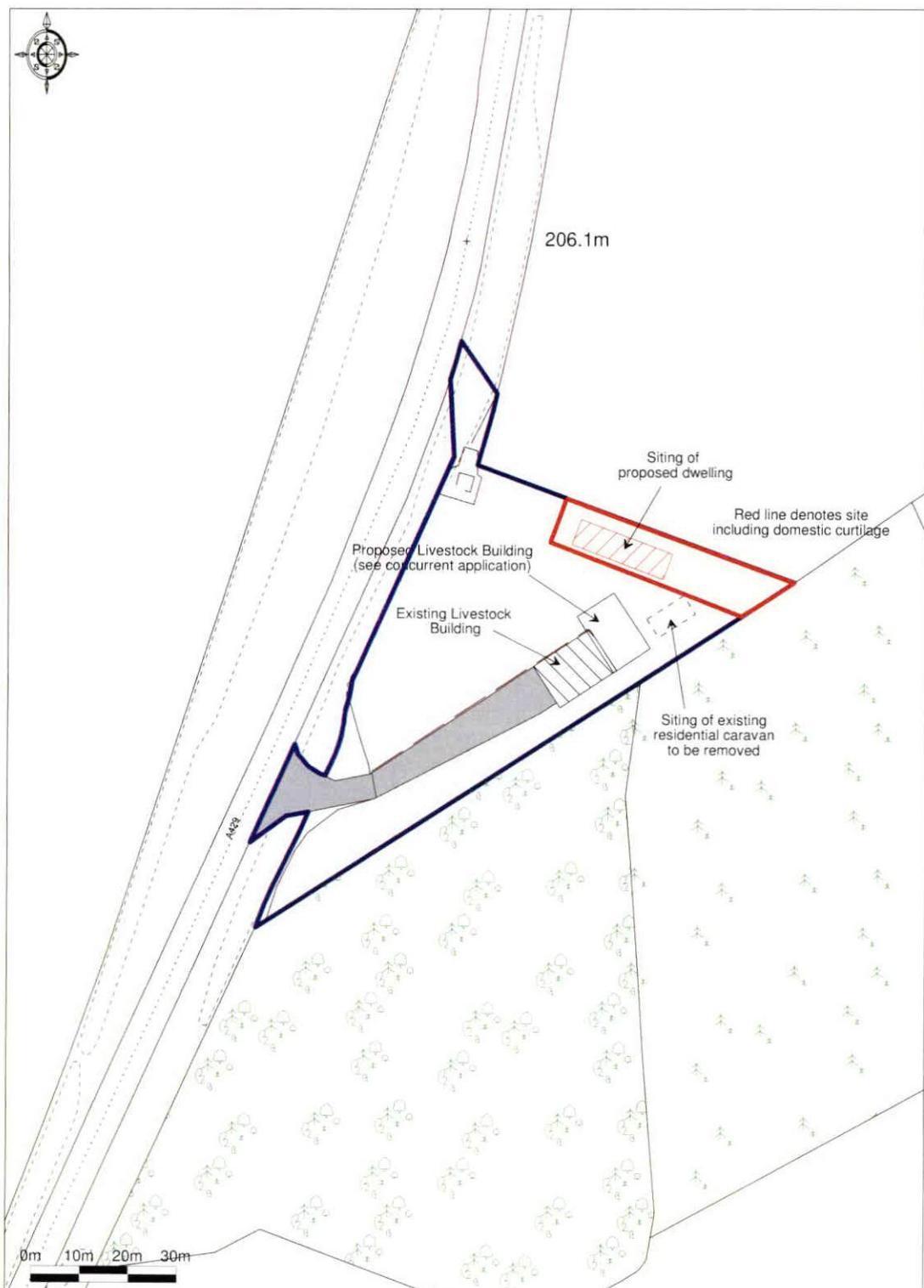
The principle of a permanent dwelling on the site is acceptable and no objection has been offered by the Highways Officer and no significant impact has been identified in respect of the Broadwell Conservation Officer. However, the impact upon the AONB and the form, design and materials employed by the dwelling are adjudged to cause material harm and are contrary to Sections 7 and 11 and Paragraphs 28, 56, 58, 60, 61, 109, 115 of the National Planning Policy Framework, Local Plan Policies 19, 24 and 42 and Supplementary Planning Guidance, The Cotswold Design Code.

**10. Proposed Reasons for Refusal:**

The proposed new dwelling, by virtue of its form, design and materials fails to reflect the character or local distinctiveness of the district. Consequently the proposal conflicts with Section 7 of the National Planning Policy Framework, Policy 42 of the Local Plan and the Supplementary Planning Guidance The Cotswold Design Code.

The site lies within the Cotswolds AONB, wherein the Local Planning Authority is statutorily required to have regard to the purpose of conserving and enhancing the natural beauty of the landscape. The proposal would cause harm to the character and appearance of the AONB by virtue of scale, design and associated domestic activities and light pollution which do not respect the agricultural context of the site. The proposal is contrary to National Planning Policy Framework Paragraphs 58, 60, 61, 109 and 115 and Cotswold District Local Plan Policies 19 and 42.

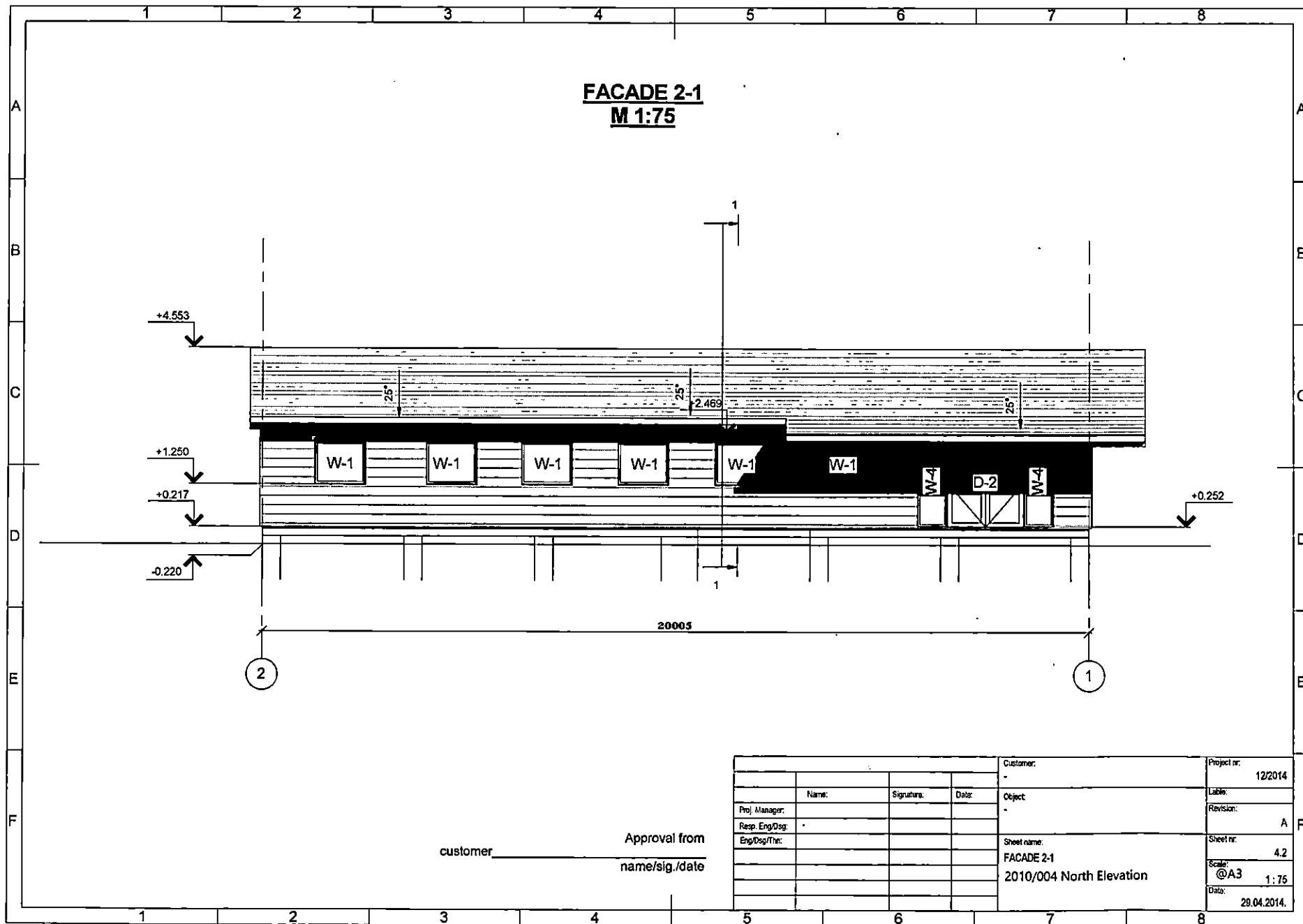
## Rural Workers Dwelling at The Old Quarry, Stow on the Wold



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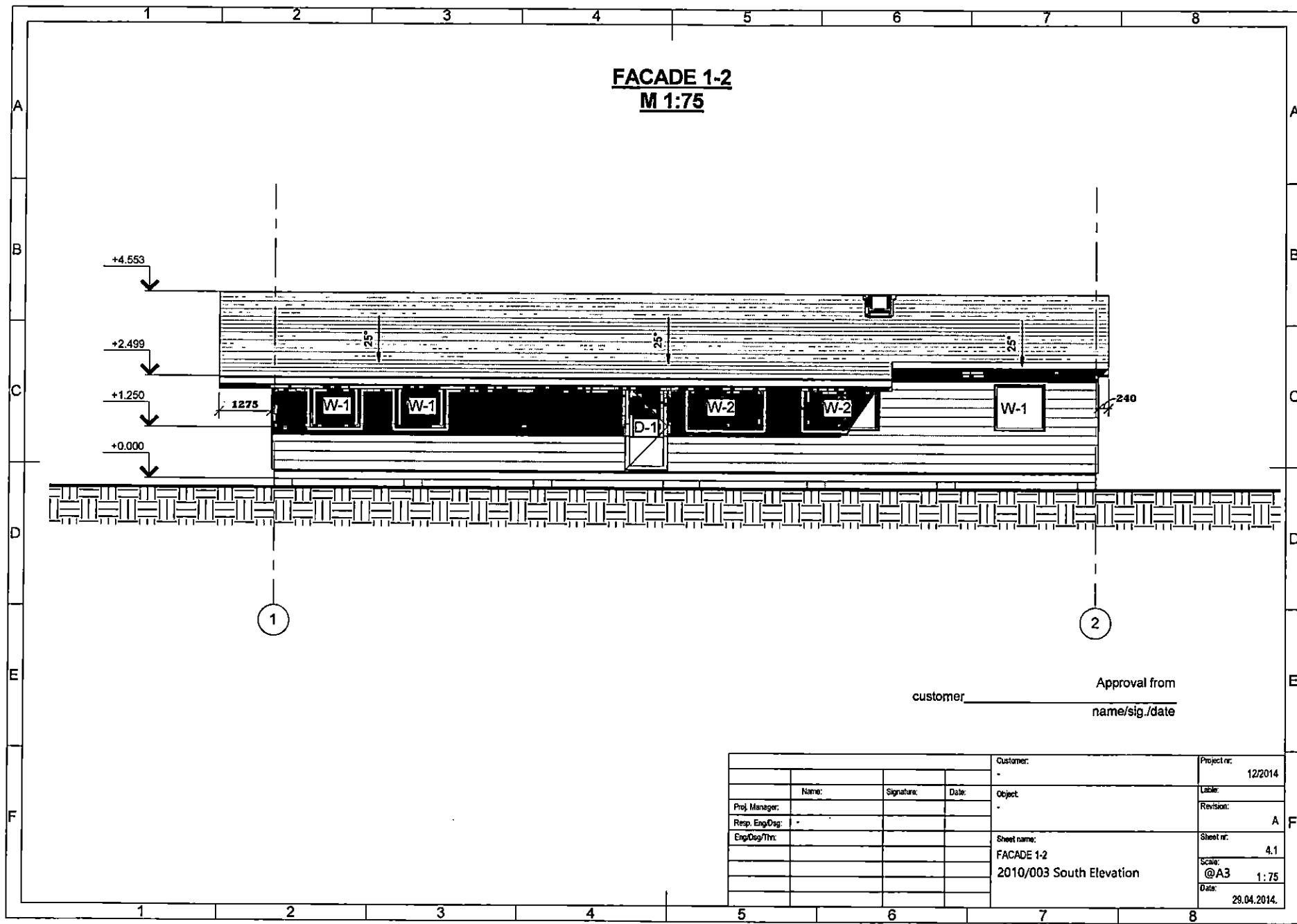
"APPENDIX B"



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"APPENDIX C"



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"APPENDIX D"

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## Fox Rural Planning & Land Management

### POST APPRAISAL ADVICE

### COTSWOLD DISTRICT COUNCIL

RE  
PLANNING APPLICATION

FOR

### PROPOSED PERMANENT RURAL WORKERS DWELLING

Planning Reference – 15/03931/FUL

AT

THE OLD QUARRY  
FOSSEWAY  
BROADWELL

## **Reference**

Further to third party evidence submitted in support of an objection to the application I have been asked to review my initial appraisal and provide further opinion where appropriate which should be read in conjunction with my appraisal dated 17<sup>th</sup> November 2015.

It should be noted that I have 5 years' experience working in two busy livestock markets and between 1986 and 1991 which frequently involved organising lairage for animals and hands on knowledge of livestock haulage.

### **The Business and Lairage Facility Use**

This business is not agriculture. The business is livestock haulage for which the lairage facility plays an essential role.

The lairage facility due to its use and unsociable hours of operation needs to be located in a rural location with good road access and The Old Quarry meets that criteria.

Initially I based my findings regarding the level of use of the facility on my interview with the applicant and evidence submitted with the application which included sheep movement records on and off the site (Holding number CPH/14/233/0055) from February 2013 through to October 2015.

Since my latest instructions I have liaised with the applicant who over the Christmas period has sent me no less than 24 emails with further documentation including as requested sample movement licences to back up the movement records and photographic evidence and cattle movement records etc.

Based on the evidence I have seen, and without going into detail with regard where livestock is coming from or going to, the fact remains that primarily sheep and cattle are kept at this facility on different days throughout each week throughout the year.

The animals are frequently stay overnight and loading/offloading can take place in the early hours or late at night. The batches that are kept here range from a handful up to several hundred at any one time.

### **Planning Policy and Approach**

The application is for a dwelling for a 'rural worker' as referred to in my appraisal and the NPPF, which would come under 'Other Occupational Dwellings' as per Annex A of PPS7 and the CDC guidance.

#### In response to the opinion of Christopher Young

- In my opinion the facility does not have to fall under the definition of agriculture for it to be considered in the context of a proposed dwelling for a rural worker.
- I clearly applied the correct policy tests in my appraisal.
- The movement records evidence that I have seen, which I assume is not for the public domain, is more than sufficient for me to make an accurate judgement as to the usage of the site.

**Reappraisal of Essential Need***Functional Need*

The primary role of this facility is the welfare of the animals and where they are rested, fed, watered and health checked and when necessary treated.

The animals are often stressed and therefore, regardless of the actual numbers present at any one time, the likelihood of health issues and need for emergency attention are greater than they would be in a settled environment on a farm.

The arrival of animals can be at all hours in every week, regularly through the year, and the unloading and loading and tending to the animals cannot be described as routine.

In my opinion there exists a functional need for there to be an experienced stock person to be permanently based on site.

*Establishment and Viability*

As referred to before, the business is livestock haulage of which the lairage facility is part. I am happy with the evidence that I have seen that the haulage business is viable

To attempt to isolate the lairage facility as the enterprise on which to base the financial viability, as Kernons have, is nonsensical.

**Conclusion**

I can see no reason to change my original appraisal in any way.

If CDC were minded to refuse the application on the basis of there being no case for essential need, and the applicant appealed, it is my opinion there would be a 80% plus chance of an inspector allowing the appeal.

**Signed** \_\_\_\_\_

**Robert Fox BSc (Hons) MRICS FAAV**

**31<sup>st</sup> December 2015**

**Date** \_\_\_\_\_

**Fox Rural Planning & Land Management**  
**[www.foxrural.co.uk](http://www.foxrural.co.uk)**



## Fox Rural Planning & Land Management

### RURAL PLANNING APPRAISAL

### COTSWOLD DISTRICT COUNCIL

#### PLANNING APPLICATIONS

FOR

THE RETENTION OF A RESIDENTIAL CARAVAN FOR  
OVERNIGHT ACCOMMODATION FOR STOCKPERSON

Planning Reference – 15/03100/FUL

AND

PROPOSED PERMANENT RURAL WORKERS DWELLING

Planning Reference – 15/03931/FUL

AT

THE OLD QUARRY

FOSSEWAY

BROADWELL

## **Reference**

I have been asked to undertake a rural appraisal of the two applications relating to temporary and permanent dwellings at The Old Quarry, Fosseway, Broadwell, and I met the applicant and inspected the site on 12<sup>th</sup> November 2015.

### **1.0 Background Information**

#### **1.01 Location**

The site is situated beside the A429, about 2km to the north of Stow-on-the-Wold about 1km to the south west of Broadwell.

OS grid reference SU 195 273

#### **1.02 Background and History**

The applicants business, Edward Gilder & Co, is entirely based around livestock transportation, and in connection with this, the subject site has been used for at least 3 years a lairage facility. Such a facility is a temporary livestock holding area with accommodation for animals whilst they are in transit for reasons of welfare and business need.

An application was submitted in 2012 for the retention of a caravan, which had been stationed for overnight accommodation for a stockperson, and the erection of a three bay livestock building (12/01922/UL). I appraised the application for the Council and permission was granted with a condition that the caravan could be stationed for a period of three years.

The current application for the retention of a caravan (15/03100/FUL) will be looked at as part of this appraisal.

Since 2012 the business has expanded. Due to the increased throughput of livestock, there is currently an application for a second agricultural building for fodder and storage (15/03075/FUL) and a retrospective application for an improved muck store (15/02289/FUL).

It is felt that the business is now well established and that there is an essential need for an experienced stockperson to be based permanently at the Old Quarry site, and hence the application for a permanent dwelling (15/0391/FUL).

### **Present Situation**

#### **2.01 Ownership and Occupation**

The haulage fleet and office is based at a yard owned by the Gilder family at Bourton-on-the-Water. The Old Quarry is owned by the applicant.

I am not aware of any other land or facilities owned or occupied by the applicant.

#### **2.02 The Present Business**

The business is involved in transporting livestock throughout the country and into Europe, and the Bourton depot is well located to pick up stock from livestock markets such as Frome, Ross-on-Wye, Hereford, Cirencester and Rugby (now based near Warwick). Sheep, cattle and pigs are taken to various destinations for breeding, finishing or slaughter.

The business also provides a service for local farmers where stock is picked up in smaller trailers from individual farms, where access might be difficult for articulated vehicles, and taken back to the Old Quarry, where they are made up into larger loads for the bigger vehicles to take to the required destination eg livestock market or abattoir. This has the knock on effect of decreasing

the number of individual farm stock movements on the main road network ie making farm to market transportation more sustainable.

Due to European Council Regulation (EC) No 1/2005 on the protection of animals during transport and related operations, and The Welfare of Animals (Transport) (England) Order 2006, there is imposed limits on travel time and imposed rest time off the transport. In addition there is enforced limitation on drivers time, and also client requirement which might dictate numbers and timing and hence the need to be flexible. This means that it is absolutely essential that a livestock haulage business has access to lairage.

In the past arrangements were made with local farms, however there are now movement standstill rules in place for biosecurity reasons, whereby the movement of any cattle, sheep goats and/or pigs onto a farm triggers a minimum 6 day standstill period on any cattle, sheep, goats and/or pigs on those premises. This posed problems for host farmers, and such arrangements became unworkable.

For biosecurity reasons lairage facilities should be located away from the haulage area and so the location of the Old Quarry site is ideal.

The animals are mainly sheep and cattle, and whilst at lairage, they are rested, provided with clean bedding, fed and watered, and assessed for any health or welfare issues. Any sick or injured animals are attended to. Once the stock is loaded up and have left the yard, the facilities are immediately cleaned and disinfected ready for the next batch.

The throughput at the lairage site is now over 10,000 animals per annum and involves work at all hours and the majority of the year.

## 2.03 Labour

The company employs 15 equivalent full time staff

## 2.04 Dwellings

At present there is a log cabin structure on site which requires fittings, furnishing and connection to services. This is what the applicant is now applying for as a permanent dwelling.

The touring caravan has been removed.

## 2.05 Facilities and Equipment

The company runs a fleet of vehicles ranging from small livestock transporter trailers up to 44 tonne articulated double decker units.

There is a 3 bay steel portal frame building at the Old Quarry site.



Existing lairage building with log cabin in the background

### **3.00 Proposals**

#### **3.01 Ownership and Occupation**

I am not aware of the applicant having plans to take on other land or facilities.

#### **3.02 Enterprise**

Subject to the ability to increase the livestock accommodation and fodder storage as per application ref 15/03075/FUL, then this will enable the throughput to increase It will also enable more pigs to be kept at lairage as they have to be kept separate from cattle and sheep and the present facilities mean that this is usually not possible.

#### **3.04 Buildings and facilities**

As per two current applications the plan is to retain the recently installed muck storage facility and to erect a further open fronted steel portal frame lairage building 45ft x 25ft.

#### **3.05 Dwellings**

The plan is to retain the existing log cabin as a permanent dwelling.

Parallel to this the intention is to keep alive the right to station a touring caravan in the event of permission not being granted for a permanent dwelling. Hence the two applications.

### **4.00 Planning Appraisal – Proposed Approach**

Clause 28 of the National Planning Policy Framework states that local planning policy should, in future, promote the development and diversification of agricultural and other land based rural businesses.

In accordance with Clause 55 of this framework, local planning authorities are required to promote sustainable development in rural areas with regard to housing but “*should avoid new isolated homes in the countryside unless there are special circumstances such as:*

- ***the essential need for a rural worker to live permanently at or near their place of work in the countryside.”***

This exact wording originated from clause 10 of PPS7, the only difference being was that clause 10 went on to recommend that planning authorities should follow the advice in Annex A to PPS7.

Despite the status of the NPPF, Annex A of PPS7 provided clear criteria to assess the ‘essential need’ for a dwelling and is still a tried and trusted process which I shall continue to use in assessing the essential need.

Also, post the publication of the NPPF, Cotswold District Council produced the Informal Guidance on Agricultural/Occupational Dwellings in the Countryside, which largely reflects Annex A to PPS7. Namely that such a dwelling would need to be justified as essential, based on such matters as a functional need and financial tests.

If is found that there is an essential need for a permanent dwelling it effectively nullifies the application for the retention of a temporary dwelling. My approach will initially be to assess the essential need for a permanent need, and then in the light of my conclusions look at the application to retain a caravan on site.

#### **4.01 Functional Need**

The most frequent reason for a functional need for a rural worker to be permanently based on a site is so that there is somebody experienced to be able to deal quickly with emergency animal welfare issues that are likely to arise throughout the majority of the year and during the middle of the night.

The majority of duties associated with the livestock at lairage will be routine. However based on the large numbers of livestock involved and the fact that they will have come from the farm or from a livestock market, and are likely to be stressed, there is bound to be times when urgent action is necessary for welfare reasons.

The fact that these incidents can occur at all hours and throughout the majority of the year translates into there being a functional need for an experienced stockperson based on site.

#### **4.02 Full-Time Worker**

The functional need requirement would relate to a full-time person in this case.

#### **4.03 Establishment and Viability**

The business is clearly viable and sustainable and likely to remain so for the foreseeable future. Whatever the future might hold with regard regulation and rule affecting the livestock haulage industry, they are unlikely to be relaxed implying that there will always be a need for independent lairage facilities.

#### **4.04 Alternative accommodation**

I am not aware of any accommodation that is available and would provide the functional need. In my opinion a dwelling would need to be on site ie within easy walking distance of the animals.

#### **5.00 Conclusion**

In accordance the special circumstances listed within paragraph 55 of the National Planning Policy Framework, there is an essential need for a rural worker to live permanently at the Old Quarry.

There would be no essential need for a temporary dwelling in the event of permanent dwelling being permitted.

Signed \_\_\_\_\_

**Robert Fox BSc (Hons) MRICS FAAV**

**17<sup>th</sup> November 2015**

Date \_\_\_\_\_

**Fox Rural Planning & Land Management**  
**[www.foxrural.co.uk](http://www.foxrural.co.uk)**

**IN THE MATTER OF**

**THE OLD QUARRY,  
FOSSEWAY,  
BROADWELL,  
NEAR MORETON-IN-MARSH**

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**OPINION**

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**No5**  
CHAMBERS

BIRMINGHAM • LONDON • BRISTOL

1. In this matter I am instructed by Framptons on behalf of Mr. and Mrs. Gerard de Thame (hereinafter "the Clients") in respect of unauthorised development at The Old Quarry, Fosseway, Broadwell, Gloucestershire (hereinafter "the Site"). The Site is owned by Mr. Gilder, who operates a livestock local haulage firm at Bourton on the Water.
2. The Site is immediately adjacent to the Client's own land which forms part of their land holding known as Broadwell Manor.
3. The local planning authority is Cotswold District Council (hereinafter "the Council").
4. The Council have received a retrospective planning application for a rural workers dwelling at the Site. It is retrospective because the house has already been largely built. There is no planning permission for the house. Attempts to rely on a planning permission granted in 2012 for a mobile home to justify the house has been unsuccessful. This approach of attempting to justify the house on the basis of that permission has been considered by the Council's enforcement officer and rejected.
5. The retrospective planning application was submitted to the Council by Mr. Gilder's agents, Moule and Co on 9 September 2015. But it could not be validated as certain information was missing. More recently, it has now been validated. The public consultation period runs until today. I have been provided with a copy of the plans. I have also received copies of the planning statement and the design and access statement.
6. The planning statement seeks to justify the new house in the countryside on the basis of lairage: lairage is a place where livestock may be rested on their way to market or slaughter. The Council granted permission for a lairage building on the Site on 17 July 2012.

7. The Clients have instructed an agricultural expert to assess the application: Tony Kernen of Kernen Countryside Consultants.
8. I have also visited the site. This was done in the company of Mr. de Thame and Mr. Kernen on Friday 18 December 2015. Today, Mr. Kernen has produced an expert report. Mr. de Thame has also produced a statutory declaration setting out his knowledge about the activities at the Site. Both of which I have read

### **Advice Sought**

9. I am asked to advise on the following matters:

- (i) Whether lairage falls within the statutory definition of agriculture.
- (ii) The applicable policy tests for a rural workers dwelling in Cotswold District.
- (iii) The standard of evidence required in light of the policy and the available evidence.

### **ADVICE**

#### **(i) Whether lairage falls within the statutory definition of agriculture.**

10. In my opinion, lairage does not fall within the definition of agriculture used in the Planning Acts. In the context of planning, “agriculture” is defined in Section 336 of the Town and Country Planning Act 1990 (hereinafter “TCPA 1990”)

“agriculture” includes horticulture, fruit growing, seed growing, dairy farming, the breeding and keeping of livestock (including any creature kept for the production of food, wool, skins or fur, or for the purpose of its use in the farming of land), the use of land as grazing land, meadow land, osier land, market gardens and nursery grounds, and the use of land for woodlands where that use is ancillary to

the farming of land for other agricultural purposes, and "agricultural" shall be construed accordingly;

11. Resting animals on their way to market or slaughter is not the breeding or keeping of livestock. Moreover, lairage is a long established word and historically it referred to the activity of taking livestock to market or to the slaughter house when it was done on foot. But that context has changed. Livestock are transported by hauliers, of which Mr Gilder is one. The idea that lairage is a form of agriculture is therefore particularly far-fetched today. The Gilder's business is more properly described as haulage. The planning statement makes this point abundantly clear at paragraph 4.1:

***"The applicant runs a well-established livestock transport company specialising in the national and international transport of agricultural livestock."***

12. This is significant because the planning statement suggests that Mr Gilder is applying for a "new agricultural dwelling" (paragraph 3.2). Since lairage is not agriculture, then the whole premise of the application is misplaced. Haulage is not agriculture and nor for that matter are those who work in it to be viewed as rural workers.

**(ii) The applicable policy tests for a rural workers dwelling.**

13. For the reasons outlined above the application proceeds on a misnomer, which is fatal. But even leaving that aside, if the Council were to consider this as a rural enterprise then the applicant faces another significant hurdle which the applicant's agents do not appear to have even considered. Absent a save local plan policy, the Council require all applications for rural workers dwellings to meet the criteria laid down in their informal guidance. This is the guidance was set out in the Annex to PPS7 and which the Council continues to use as informal guidance. The guidance requires applicants to meet not only the function test but also on a financial test for a rural workers dwelling.

14. The need for applicants and decision makers to use this guidance was approved by the Cabinet of the Council on 3 May 2012. It will remain in place until the new Local Plan is adopted. The new Local Plan is still at the consultation stage, but it contains Policy H3. This too contains the financial test.

15. This guidance is informal because it is not part of the adopted development plan. But not inconsistent with the NPPF, as regards paragraph 215. It is seeking to ensure that development is genuine and in a very literal sense sustainable. The need for development to be sustainable is a key part of the NPPF. It follows there is no inconsistency with retaining the financial test.

**(iii) The standard of evidence required in light of the policy and the available evidence.**

16. For the reasons set out above, the application immediately fails the policy requirements laid down by the Council. The applicant has provided no financial information about the use of this Site. This point is highlighted in the Mr. Kernon's report. I note that there are no accounts provided.

17. The reference to a turnover in excess £2,000,000 in the planning statement (para 4.1) does not relate to the Site. It relates to the business operating from the site in Bourton on the Water. That is not relevant to this Site.

18. But even as regards the functional test (which is contained in paragraph 55 of the NPPF), Mr Gilder has submitted no tangible evidence to support the claims of livestock movements. This is

explored in more detail in Mr. Kernen's report. There are four main problems:

- (i) None of the evidence which one would expect to see supporting an application of this kind is provided: documents which demonstrate the livestock movements, haulage records etc.
- (ii) The authors of the planning statement appear to rely entirely on what Mr Gilder has told them in interview about the livestock movement for the purpose of their report. This suggests they may not have even seen the documentation highlighted above themselves. At the very least, a great deal of information about this operation should have been examined by the authors of the report.
- (iii) The actual (rather than hypothetical) livestock numbers which are referred to in the planning statement are, as Mr Kernen points out, very low indeed. They do not justify a new house on the site.
- (iv) Finally, and most critically, Mr de Thane has sworn a statutory declaration which provides clear evidence that even the limited livestock movements which are being suggested are not taking place. He says that despite weekly visits to the edge of the Site, he has never seen livestock present. None have been present whenever there have been visited by the professional team who now act on behalf of the Clients, including myself. The building certainly looks to have been very little used, if ever.

19. The last point is a very serious one. It calls into question the veracity of the whole application. Shams are not uncommon in this area of planning law. Some people will try various tactics to secure a house in the countryside at the fraction of the market value. The position of the house, located on the crest of the site away from the entrance and with widespread views for twenty or third miles over the Moreton plain must raise serious doubts about what is the key objective of Mr Gilder. The house was of course erected without planning permission.
20. In my opinion, the Council should be proceeding very carefully. They will need to see detailed documentary evidence to not only satisfy the financial test but also the function test for this new house. No such primary documentary evidence has been provided and that is very surprising. So much so, that in my opinion, the statutory declaration of Mr de Thame means that it would now be perverse if the Council did not require the documentation from Mr Gilder before determining the application.
21. Given the nature of evidence, any such documentation should also be shared with Mr Kerton so that he can examine its veracity.
22. I trust I have dealt with all the matters of concern to my instructing consultant, but needless to say if there are any other matters arising I would be happy to discuss them further, upon the telephone if necessary.

21 December 2015

**CHRISTOPHER YOUNG**  
**No5 Chambers**  
**Birmingham – Bristol – East Midlands - London**



BIRMINGHAM • LONDON • BRISTOL

**IN THE MATTER OF**

**THE OLD QUARRY,  
FOSSEWAY,  
BROADWELL,  
NEAR MORETON-IN-MARSH**

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**OPINION**

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Framptons

Oriel House

42 North Bar

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**IN THE MATTER OF**

**THE OLD QUARRY,  
FOSSEWAY,  
BROADWELL,  
NEAR MORETON-IN-MARSH**

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**OPINION No.2**

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**No5**  
CHAMBERS

BIRMINGHAM • LONDON • BRISTOL

1. In this matter I am instructed by Framptons on behalf of Mr. and Mrs. Gerard de Thame (hereinafter "the Clients") in respect of unauthorised development at The Old Quarry, Fosseway, Broadwell, Gloucestershire (hereinafter "the Site"). The Site is owned by Mr. Gilder, who operates a local livestock haulage firm at Bourton-on-the-Water.
2. The Site is immediately adjacent to the Clients' own land which forms part of their land holding known as Broadwell Manor.
3. The local planning authority is Cotswold District Council (hereinafter "the Council").
4. The Council have received a retrospective planning application for a rural workers dwelling at the Site. It is retrospective because the house has already been largely built. There is no planning permission for the house. Attempts to rely on a planning permission granted in 2012 for a mobile home to justify the house has been unsuccessful. This approach of attempting to justify the house on the basis of that permission has been considered by the Council's enforcement officer and rejected.
5. The retrospective planning application was submitted to the Council by Mr. Gilder's agents, Moule and Co on 9 September 2015. But it could not be validated as certain information was missing. More recently, it has now been validated. It was accompanied by a planning statement
6. The planning statement seeks to justify the new house in the countryside on the basis of lairage: lairage is a place where livestock may be rested on their way to market or slaughter. The Council granted permission for a lairage building on the Site on 17 July 2012.
7. The Clients have instructed an agricultural expert to assess the application: Tony Kemon of Kemon Countryside Consultants.
8. I have also visited the site. This was done in the company of Mr. de Thame and Mr. Kemon on Friday 18 December 2015. Mr. Kemon produced an expert report. Mr. de Thame has also produced a statutory declaration setting out his knowledge about the activities at the Site. Thereafter I produced a written opinion in respect of this matter on 21 December 2015. My opinion, Mr. Kemon's report and Mr. De Thame's statutory declaration were all submitted during the statutory consultation period for the application.

9. I am asked to advise on the following three matters:

- (i) The advice provided to the Council by Mr. Robert Fox, in the form of two reports dated 17 November 2015 and 31 December 2015.
- (ii) Whether the Clients' agricultural advisor Mr Kerton should be entitled to see the evidence presented to Mr Fox by Mr Gilder; and
- (iii) How best to obtain this evidence.

## **ADVICE**

### **(i) The Advice to the Council provided by Mr Robert Fox**

10. I have read the two reports produced by Mr Fox. The first was written well before my advice, the report of Mr Kerton or the statutory declaration of Mr de Thame. The second was written shortly afterwards. I focus on the second, as it seeks to directly respond to the Clients' evidence on the application.

11. Mr Fox's second report makes clear that Mr Gilder's business is not agriculture (page 2 and 3). That is to be contrasted with Mr Gilder's planning statement which makes plain he is applying for "**a new agricultural dwelling**" (paragraph 3.2) as was made clear in my previous opinion (paragraph 12). Mr Fox's second report does not address this inconsistency. Nor does he explain why a livestock haulage business or a lairage facility needs to be in a rural location, given the animals are only there by definition for a very short period of time and not in any way grazing upon the land.

12. Mr. Fox also suggests that Mr. Kerton's "**attempt to isolate the lairage facility as the enterprise on which to base the financial viability... is nonsensical**". But he makes no attempt to explain the nature of the existing arrangements which have presumably existed for many years in which the livestock business has operated successfully without the need for the separate lairage facility in the Quarry Site. No attempt has been made to explain the existing operations or the extent to which the Gilder family site on the edge of Bourton-on-the-Water, which carries the sign for this livestock haulage business has

been utilised: it appears that a new residential property has been permitted at this location. It would appear the haulage yard is in this location, together with other businesses. Mr. Fox confirms this is the location of the haulage yard but he does not provide any more detail about the operations.

13. Far more troubling though is Mr Fox's failure to even mention, let alone engage with, the statutory declaration of Mr. de Thame. Mr de. Thame has made clear in his statutory declaration since taking up occupation nearly 18 months ago the lairage building has not been used at all:

***"At no time since our occupation of Broadwell Manor have I seen the lairage building occupied by animals"*** (paragraph 10)

14. As the nearest neighbour to the Site he is well placed to see if there is any activity day or night. His house is below the Site, but he regularly visits the edge of the Quarry site, and has a Land Rover Defender, specifically for the purpose of inspecting his agricultural land around his house. The lairage facility looks largely unused.
15. Given Mr Fox assumed in his first report that "***the subject site has been used for at least 3 years as (sic) lairage facility***" (page 2) and "***the throughput at the lairage site is now over 10,000 animals per annum and involves work at all hours and the majority of the year***" (page 4), he should very clearly have addressed the contents of Mr. de Thame's statutory declaration. I confess I cannot begin to comprehend why he has failed to do so.
16. In his second report, Mr Fox makes clear that his first report was based "***on my interview with the applicant and evidence submitted with the application including sheep movement records on and off site from February 2013 to October 2015.***" Mr. de Thame took up occupation as Mr. Gilder's neighbour in September 2014.
17. It is to be noted the application documents seen by the Client and those instructing me do not contain any actual movement records, only a summary of what the Applicant has told those who act on his behalf.
18. With the greatest possible respect, Mr Fox appears not to understand the severity of the issue. What is being raised, is an alleged fraud on the part of Mr Gilder. Such an

allegation needs to be addressed and met head on in Mr. Fox's report. Moreover, Mr Fox in his first report includes the extract from PPS7 which specifically highlights the need for intense scrutiny of applications such as this "*with the aim of detecting attempts to abuse the concession that the planning system makes for such dwellings..*" Such abuses are well known when it comes to seeking permission for new houses in the countryside.

19. It is of some considerable significance that Mr. de Thame specifically offered Mr Fox the opportunity to visit his land and view for himself the Site on an unscheduled visit, of which Mr Gilder would not be aware, and Mr Fox declined to do so.
20. The nature and significance of Mr. de Thane evidence was also highlighted in my opinion. Mr. Fox does not address that part of the opinion. Yet he clearly had the opinion and so he cannot now claim that he did not know of Mr de Thame's statutory declaration, even if he claims it was not sent to him by the Council.
21. It seems to me that Mr. Fox may have closed his mind to the new evidence which he was meant to be addressing in his second report. Such an approach is irrational and Wednesbury unreasonable. He must address the evidence of Mr. de Thame and properly investigate the matter. Not taking up the offer to visit the Site is also perverse.

**(ii) Whether the Clients' agricultural advisor Mr Kerton should be entitled to see the evidence presented to Mr Fox by Mr Gilder;**

24. I made clear in my previous opinion that the Council should be proceeding very carefully with this application given the nature of the evidence. I made clear they will need to see detailed documentary evidence to not only satisfy the financial test but also the functional test for this new house. I also highlighted the fact that no such primary documentary evidence has been provided and that this was very surprising.
25. I also made clear, that in my opinion, the statutory declaration of Mr de Thame means that it would now be perverse if the Council did not require the documentation from Mr Gilder before determining the application.

26. I understand the Mr Gilder has provided further evidence to Mr Fox, including 24 emails and sample movement livestock licences.
27. As I made clear in my previous advice, given the nature of evidence, any such documentation should also be shared with Mr Kerton so that he can examine its veracity. He should be provided with it. As a fellow professional, Mr Fox can be satisfied that it will be used by Mr Kerton in an appropriate manner.
28. It would, again, be perverse not to allow Mr Kerton to see this evidence given there is here an allegation which Mr de Thame has made. Mr Kerton should be entitled to examine the extent to which the movement records relate to the quarry site.

**(iii) How best to obtain this evidence ?**

29. This evidence should be sought voluntarily from the Council. If it is not forthcoming within a reasonable time (7 days) then an FOI request should be made. That should extend to all correspondence passing between Mr. Gilder, all council officers, members, agents and officials and Mr. Fox. If the planning application is granted it can all be obtained by means of disclosure in Judicial Review proceedings.
30. I trust I have dealt with all the matters of concern to my instructing consultant, but needless to say if there are any other matters arising I would be happy to discuss them further, upon the telephone if necessary.

**19 February 2016**

**CHRISTOPHER YOUNG  
No5 Chambers  
Birmingham – Bristol – East Midlands - London**

# No5

CHAMBERS

BIRMINGHAM · LONDON · BRISTOL

## IN THE MATTER OF

**THE OLD QUARRY,  
FOSSEWAY,  
BROADWELL,  
NEAR MORETON-IN-MARSH**

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## OPINION No.2

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Framptons

Oriel House

42 North Bar

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OX16 0TH

**IN THE MATTER OF**

**THE OLD QUARRY,  
FOSSEWAY,  
BROADWELL,  
NEAR MORETON-IN-MARSH**

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**OPINION No.3**

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**No5**  
CHAMBERS

BIRMINGHAM · LONDON · BRISTOL

**Introduction**

1. In this matter I am instructed by Framptons on behalf of Mr. and Mrs. Gerard de Thame (hereinafter "the Clients") in respect of unauthorised residential development at The Old Quarry, Fosseway, Broadwell, Gloucestershire (hereinafter "the Site"). The Site is owned by Mr. Gilder, who operates a local livestock haulage firm at Bourton-on-the-Water.
2. The Site is immediately adjacent to the Clients' own land which forms part of their land holding known as Broadwell Manor.
3. The local planning authority is Cotswold District Council (hereinafter "the Council").
4. The Council have received a retrospective planning application for a rural workers dwelling at the Site. It is retrospective because the house has already been largely built. There is no planning permission for the house. Attempts to rely on a planning permission granted in 2012 for a mobile home to justify the house has been unsuccessful. This approach of attempting to justify the house on the basis of that permission has been considered by the Council's enforcement officer and rejected.
5. The retrospective planning application was submitted to the Council by Mr. Gilder's agents, Moule and Co on 9 September 2015. But it could not be validated as certain information was missing. It was subsequently validated. It was accompanied by a planning statement. A further document entitled "Additional Design Commentary" has also now been submitted in support of the application, dated March 2016
6. The planning statement supporting the application seeks to justify the new dwellings in the countryside on the basis of lairage: lairage is a place where livestock may be rested on their way to market or slaughter. The Council granted permission for a lairage building on the Site on 17 July 2012.
7. The Clients have instructed an agricultural expert to assess the application for a dwelling: Tony Kernon of Kernon Countryside Consultants.
8. I have previously advised twice in this matter. A new matter has arisen upon which I am asked to provide my opinion.

**The Further Matter**

9. An issue has arisen regarding the disclosure of information being relied upon by the Council in its assessment of the application. The Council has employed an independent agricultural consultant, Mr Fox, to investigate the legitimacy of the rural dwelling. The issue of the dwelling's legitimacy relates to it being functionally necessary and financially justified. It is common practice for these matters to be investigated robustly in the context of considering a planning application. To do so, it is necessary to understand the way in which the rural business operates and the evidence supporting its operation, to see if a new dwelling in the countryside is justified.
10. Mr Fox has eluded to the fact that in compiling his report he has been provided with a very considerable number of emails sent from Mr. Gilder to himself. These emails presumably relate to the information which Mr Gilder seeks to rely upon to demonstrate how his business operates at this site. There is a fundamental disagreement between the Clients and Mr. Gilder about the extent to which the Site is being used for lairage. This is the main issue which the Clients are seeking to challenge.
11. The Client's agricultural advisor, Mr Kemon has asked for sight of these emails and their attachments to allow him to understand the evidence which is being relied upon by Mr Gilder to support his application.
12. In an email dated 15 March 2016 to those instructing me, the Council's planning officer (Scott Britnell) has indicated that having spoken to the Council's legal team, the Council is resisting the disclosure of the emails to which Mr. Fox has already referred in his report. It is suggested in the email from Scott Britnell that the emails are privileged. The nature of the privilege is not explained further.
13. For my part, I do not understand this suggestion. Mr Gilder is not Mr Fox's client. In this instance Mr Fox is employed by the local planning authority to assist in the determination of a planning application. He is not, and should not, be acting as Mr Gilder's professional advisor. I therefore fail to see why it is said to be privileged communications. Moreover, Mr Fox is engaged in the consideration of a planning application in the public realm. All of the evidence being relied upon should be publicly available as a matter of course.

14. It is particularly inappropriate to resist disclosure of this information in the context of an application for a rural workers dwelling, where there is an express policy requirement to demonstrate the functional need for the dwelling. The enterprise for which the need for the dwelling is based should be financially sound. Plainly, the evidence to support that should be entirely transparent. Otherwise the public is being deprived of information which is central to the whole nature of the application.
15. I must stress that it is entirely normal for the financial and operational information surrounding a rural business to be made available when an application for a rural dwelling is being considered. It is central and fundamental to the application itself. For this type of application, such information cannot be treated as commercially sensitive. And the transparency required should extend to all of the information which the Council, and its agricultural advisor, have been provided with.
16. The Client is advised by an agricultural consultant who considers it necessary to have sight of the emails and any associated attachments. It is being requested for the very legitimate reasons of allowing Mr Kemon to see all of the evidence upon which the Council seeks to rely in judging the functional and financial case for this dwelling.
17. In my opinion, it is completely inappropriate for the Council to refuse to disclose the emails and any attachments which the Council's own expert has expressly highlighted. The information should be provided to Mr. Kemon forthwith.
18. If the communications are not provided forthwith, then in my opinion, it forms a legitimate ground of challenge in judicial review proceedings to any grant of planning permission for the dwelling. In the context of a planning application, a reasonable and timely request for the information which has formed part of the evidence before the Council's specialist advisor should not be refused, especially given the nature of the application and the main issue in dispute. Once proceedings for judicial review have been issued, the Clients could seek an order from the Court for disclosure of this material.
19. This opinion, if provided to the Council, would put officers on notice that this is the Clients intention.

24. I trust I have dealt with all the matters of concern to my instructing consultant at this time, but needless to say if there are any other matters arising I would be happy to discuss them further, upon the telephone if necessary.

**24 March 2016**

**CHRISTOPHER YOUNG**  
**No5 Chambers**  
**Birmingham – Bristol – East Midlands - London**



**IN THE MATTER OF**

**THE OLD QUARRY,  
FOSSEWAY,  
BROADWELL,  
NEAR MORETON-IN-MARSH**

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**OPINION No.3**

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