

POLICY AG1 - DEVELOPMENT AND AGRICULTURE

POLICY AG2 -

THE PROTECTION OF THE BEST QUALITY AGRICULTURAL LAND

OBJECTIONS: 047/12 Bryant Homes North West Ltd 070/87, 070/88 GO-M
081/14 House Builders Federation 121/12 MAFF
120/2 National Farmers Union

COUNTER-OBJECTION: 121/D MAFF

Summary of Objections

- 12.1 The word 'normally' should be deleted from the Policies (070/87, 070/88), and in Policy AG2 the 'best and most versatile' land should be referred to instead of the 'best quality' (121/12).
- 12.2 Policy AG2 should be amended to accord with the guidance in PPG7 *The Countryside and the Rural Economy* that if such land is required for development, development should be directed towards land with the lowest possible classification¹. This would recognise that although good quality agricultural land is an important resource, there are circumstances when it should be released for development (047/12).
- 12.3 The Policies suggest a rigid interpretation of government advice, and appear to preclude consideration of types of development such as housing, and other material considerations (081/11, 081/14).
- 12.4 Although Policy AG2 appears to contain criteria which would enable land to be returned to its best quality, such a proviso could give rise to applications which would prejudice the protection thereby afforded (120/2).
- 12.5 The first proposed amendment to Policy AG2 ('the first alteration')² is not as protective as the Deposit Draft version of the Policy. The test applied appears to be one of practicability, which does not reflect the considerable weight which PPG7 requires to be given to the protection of the best and most versatile land (121/D).

Assessment and Conclusions

12.6 Published changes to both Policies omit 'normally', and in Policy AG2 the 'best quality land' is replaced by the 'best and most versatile agricultural land'³. The other

¹ PPG7 (1992), paragraph 2.6. The PPG has been replaced by PPG7 (1997) *The Countryside - Environmental Quality and Economic and Social Development*, the comparable reference being paragraph 2.18.

² ALT/AGRICULTURE/003 (CD056, page 163).

³ ALT/AGRICULTURE/002 (CD056, page 162) and ALT/AGRICULTURE/003, as above.

Objections, and Counter-objection 121/D, represent different shades of opinion as to how firmly, or alternatively how flexibly, the national policy that land falling within Agricultural Land Classification Grades 1, 2 or 3a should be protected is to be applied in relation to development proposals. A second published change to Policy AG2 ('the second alteration')⁴ has in response to the Counter-objection, the effect of restoring a stronger 'protection' element in the policy than is achieved in the first alteration.

12.7 The 'front line' protection of the best and most versatile agricultural land is conferred by Policy AGR1, in the amended form I recommend elsewhere⁵. That Policy gives considerable weight to the protection of the best and most versatile land, whilst acknowledging that there might be circumstances in which development of some of that land may be unavoidable. The second proposed alteration to Policy AG2 does not in my view co-exist very comfortably with this, as by implication it does not, unlike Policy AGR1, appear to contemplate any development being acceptable which would not allow for the restoration of the land to its former quality. This would appear to rule out any permanent form of development such as housing, even if such development would only be permitted in the exceptional circumstances implied in Policy AGR1. It appears from Paragraphs 12.11 and 12.13 of the Reasoned Justification for Policy AG2 that the Policy is intended to relate to operational development as well as changes of use.

12.8 The implication of this is that, if other material considerations suggested exceptionally that permanent operational development should be permitted on land classified as 'best and most versatile', that permission might have to be given with the acknowledgment that restoration of the land to agriculture was impracticable. In these circumstances the first alteration proposed to Policy AG2 might be more compatible with Policy AGR1 if the words 'where practicable' could be interpreted as acknowledging that there might be some types of development where the prospect of restoration to agricultural use would not be practicable.

12.9 Clearly if the type of development proposed was one where restoration to agriculture was possible, then that might count in its favour. If not, then the effective loss of agricultural land would have to be weighed against the advantages of the development. This would suggest that Policy AG2 should be expressed in the form proposed in the first alteration, although the words 'its former quality' are in my view preferable to 'the best agricultural production'. I however recommend an alternative construction of Policy AG2 which seems to me to be more appropriate. The effect of this would be to require all developers to demonstrate *to what extent* it would be practicable to carry out an acceptable restoration of the land to agricultural use. In some cases the degree of practicality would be nil, and this would no doubt be taken into account in the deciding whether or not planning permission should be granted.

⁴ ALT2/AGRICULTURE/002 (CD057, page 19).

⁵ Policy AGR1 - The Protection of Agriculture, as proposed to be amended by ALT3/AGRICULTURE/001; see page 42 of this report.

Inspector's Recommendation

12.10 I recommend that the UDP be modified:

(a) by the amendment of Policy AG1 in accordance with ALT/AGRICULTURE/002 and

(b) by the amendment of Policy AG2 to read:

'In order to protect Wirral's best and most versatile agricultural land, proposals involving the non-agricultural use of land classified within grades 1, 2 and 3(a) of the MAFF Agricultural Land Classification must, before permission is granted, demonstrate the extent to which it would be practicable to return the land to its former quality if the development took place.

In assessing the scope for a future return to the best quality agricultural land, particular regard will be paid to:

- (i) the siting and extent of hard development proposed;
- (ii) the extent and depth of disturbance to the soil structure'.

POLICY AG3 - CONTROLS FOR AGRICULTURAL PERMITTED DEVELOPMENT

OBJECTIONS: 093/9 The Leverhulme Estate 121/13 MAFF

Summary of Objections

- 12.11 Policy AG3 imposes unjustified and excessive controls on agricultural permitted development. PPG7 *The Countryside and the Rural Economy* advises that the formal submission of details for approval should only be required where a proposal is likely to have a significant impact on its surroundings¹. The Policy should at best be detailed as Supplementary design Guidance (093/9).
- 12.12 The Policy could unreasonably be used to prevent legitimate agricultural development in Areas of Special Landscape Value (121/13).

Assessment and Conclusions

12.13 Policy AG3 details the circumstances in which the Council consider that a determination requiring details to be submitted for approval will be made. However, it would be open for the Council to take no action upon receipt of an application for a determination in any specific case, if they consider that the proposals do not justify their consideration. Policy AG3 will not affect the number of applications for a determination as to whether prior approval is necessary².

12.14 Policy AG3 also in my view contains criteria which reasonably describe what issues will be considered significant in the assessment of any proposal under the 'prior approval' procedure. It should be borne in mind that the issue of principle is not for consideration³. However, it seems to me that Criterion (i) of the Policy is unnecessarily severe and I suggest alternative references to buildings which are isolated or *prominently* visible.

12.15 If Policy AG3 were deleted from the UDP it does not necessarily follow that the Council would wish to modify the criteria which they would tacitly use to determine whether prior approval was necessary and whether approval should be given in any particular case. In my view therefore the presence of such a Policy is justified, and in the Plan rather than as Supplementary Planning Guidance.

¹ PPG7 (1992), Annex C, paragraph C3. The PPG has been replaced by PPG7 (1997) *The Countryside - Environmental Quality and Economic and Social Development*, the comparable reference being Annex E, paragraph E15.

² For qualifying circumstances see Schedule 2, Part 6, Class A2(2)(a) to (d), Condition (i) of the Town and Country Planning (General Permitted Development) Order 1995 (SI 1995 No. 418) ('the GPDO').

³ PPG7 (1997), Annex E, paragraph E15. The GPDO, Schedule 2, Part 6, Class A.2(2), Condition (i) lists siting, design and general appearance of the building, and so on as matters to be considered.

12.16 There is no evidence that the Council would use Policy AG3 perversely or to seek to prohibit all agricultural development in Areas of Special Landscape Value (ASLVs); the Policy should be used thoughtfully in ASLVs to strike a balance between the legitimate needs of agriculture and the need to protect the Borough's best landscapes.

12.17 Although no duly made Objection has been made to the presence of the word 'normally' in the first line of Policy AG3 and the Council has not published any change to the Policy in connection with that word, it is in my view unnecessary, especially in view of the modified Criterion (i).

Inspector's Recommendation

12.18 I recommend that the UDP be modified by the amendment of Policy AG3 as follows:

- (a) by the deletion of the word 'normally' in the first line of the Policy and
- (b) by the replacement of Criterion (i) by the following:
 - (i) 'in an isolated location or prominently visible over a wide area or from the main road network shown on Map 2;',

but that no other modification be made in response to Objections 093/9 and 212/13.

POLICY AG4 - THE CONTROL OF AGRICULTURAL DEVELOPMENT

OBJECTIONS: 070/89 GO-M 093/12 The Leverhulme Estate
120/3 National Farmers Union 127/14 Wirral Wildlife

Summary of Objections

12.19 The word 'normally' should be deleted from Policy AG4 (070/89). The Policy would unreasonably restrict agricultural development and should be deleted; each proposal should be considered on its merits. Detailed design guidance could be given in Supplementary Planning Guidance (093/12).

12.20 Criterion (iii) of the Policy should be amended to refer to the structures proposed not *significantly* affecting the amenity of neighbouring (unrelated) property (120/3). The Policy should contain a criterion protecting nature conservation interests (127/14).

Assessment and Conclusions

12.21 A published change to Policy AG4 omits 'normally', adds the word 'significantly' to Criterion (iii) and inserts a fourth criterion relating to nature conservation (and listed buildings)¹.

12.22 I see no objection to the principle of the Policy; none of the criteria (especially as modified) is in my view unreasonable or unduly prescriptive in what it seeks to achieve. Nor does any criterion offer detailed design guidance that might more appropriately be featured in Supplementary Planning Guidance. Even if the Policy were deleted it is likely that the Council would bring the same issues to bear as are referred to in the Policy. Its presence in the UDP is therefore of benefit both to those wishing to promote agricultural development and to those other interests which need to be taken into consideration.

Inspector's Recommendation

12.23 I recommend that the UDP be modified by the amendment of Policy AG4 in accordance with ALT/AGRICULTURE/004, but that no modification be made in response to Objection 093/12.

¹ ALT/AGRICULTURE/004 (CD056, page 164).

POLICY AG5 - CRITERIA FOR AGRICULTURAL NUISANCES

POLICY AG6 - DEVELOPMENT NEAR AGRICULTURAL NUISANCES

OBJECTIONS: 070/90, 070/91 GO-M 093/13, 093/14 The Leverhulme Estate

120/4 National Farmers Union 121/14 MAFF

COUNTER-OBJECTION: 121/E MAFF

Summary of Objections

- 12.24 The word 'normally' should be deleted from policies AG5 and AG6 (070/90, 070/91). Both Policies fail to accord with PPG7 *The Countryside and the Rural Economy* which promotes rural businesses to benefit local economies and communities¹. The Policies should be replaced by more general and wide-ranging supplementary design guidance in the countryside (093/13, 093/14).
- 12.25 Although some livestock units and the storage of livestock wastes may cause problems, sometimes new development is required by statutory agencies to improve existing systems. There is no indication in Policy AG5 as how the judgement will be made that the potential for nuisance has been brought within acceptable limits. Thus the implementation of the Policy in its current wording may cause difficulties (120/4).
- 12.26 Policy AG5 should indicate that facilities for the storage of slurry (etc) will be permitted providing the potential for nuisance can be brought within acceptable levels. PPG7 states that local planning authorities should consider sympathetically development to meet the regulations on the control of pollution² (121/14). The proposed amended version of Policy AG5³ should be further modified by reference to Paragraphs B3.5 and B3.6 of PPG7, Annex B⁴ (121/E).

Assessment and Conclusions

12.27 Published changes to Policies AG5 and AG6 omit 'normally'⁵. The proposed amendments to Policy AG6 also introduce textural changes which in my view strike a better balance in the relationship between existing agricultural activities or processes which may be

¹ It is assumed that this refers to PPG7 (1992), paragraphs 2.12 and 2.13. The PPG has been replaced by PPG7 (1997) *The Countryside - Environmental Quality and Economic and Social Development*, the comparable references being paragraphs 3.8 to 3.11.

² The reference is taken here to be PPG7 (1992), Annex B, paragraphs B3.5 and B3.6. The comparable references in PPG7 (1997) are Annex C, paragraph C6 and the Department of the Environment publications listed in Annex J.

³ ALT/AGRICULTURE/005 (CD056, page 165).

⁴ See Footnote 2 above.

⁵ ALT/AGRICULTURE/005 as above; ALT/AGRICULTURE/006 (CD056, page 166).

considered to be of nuisance and new businesses seeking a location in the countryside. For example, the amended Policy AG6 introduces the notion of 'significant prejudice' to amenity interests. In this modified form it seems to me that both Policies have some purpose in the UDP; to my mind design guidance outside the Plan would even if it were of general scope be no substitute for the kind of control that the Policies are intended to exercise.

12.28 Current national planning guidance recognises that intensive livestock units may have the potential to cause nuisance to occupiers of neighbouring 'protected buildings'⁶. It is principally for this reason that permitted development rights do not extend within a 400 metre *cordon* of such buildings. This in my view is clearly intended to enable local planning authorities to consider the potential effects of intensive units and to make decisions on planning applications accordingly. As the Council point out, the outcome may not necessarily be the refusal of planning permission; harmful effects may be capable of mitigation by measures imposed by condition. Policy AG5 is not in my view an unreasonable expression of the kind of consideration that national guidance envisages should be given to these circumstances.

12.29 A further amendment to Policy AG5 is however proposed to meet the point made in Objection 121/14, and in 120/4, that favourable consideration should be given to proposals required to comply with improved environmental standards⁷. This proposed change would by implication rather than expressly, satisfy the request in Counter-objection 121/E. It would also remove the 'presumption against' clause which is a feature of the earlier versions of Policy AG5. I therefore consider the Policy to be acceptable in this amended form.

Inspector's Recommendation

12.30 I recommend that the UDP be modified by the amendment of Policies AG5 and AG6 in accordance with ALT2/AGRICULTURE/003 and ALT/AGRICULTURE/006, but that no further modification be made in response to Objections 093/13 and 093/14.

⁶ PPG7 (1997), Annex C, paragraph C4. The term 'protected building' is explained in paragraph C3.

⁷ ALT2/AGRICULTURE/003 (CD057, page 20).

POLICY AG7 - AGRICULTURAL AND HORTICULTURAL RETAILING
POLICY AG8 - CRITERIA FOR EQUESTRIAN AND LIVERY ACTIVITIES

OBJECTIONS: 070/92, 070/93 GO-M 120/5 National Farmers Union 121/15 MAFF
122/9 Rural Development Commission
215/64 Wirral Green Belt Council

COUNTER-OBJECTIONS: 121/F MAFF 215/CC Wirral Green Belt Council

Summary of Objections

- 12.31 The word 'normally' should be deleted from the Policies (070/92, 070/93). Policy AG7 appears to impose a blanket restriction on the retailing of imported agricultural and horticultural produce, contrary to the theme of farm diversification in PPG7 *The Countryside and the Rural Economy*¹. The UDP does not have any policy relating to rural diversification and regeneration, apart from Policy AG8 (120/5).
- 12.32 Policy AG7 in its deposit or first amended form² could prevent farm based retailing; it is the scale of use which is important, not the amount of 'imported goods'. Agricultural and horticultural retailing should be encouraged as a means of assisting rural businesses and the rural economy (121/15, 121/F).
- 12.33 Policy AG7 is too restrictive and inhibits diversification of the rural economy. It may be appropriate to have a policy allowing locally produced produce to be sold in farm shops, an approach adopted in the St Helens UDP (122/9).
- 12.34 The further amendments to Policy AG7 proposed ('the second alteration')³ set a presumption towards a very considerable increase in agricultural and horticultural retailing from farms. These activities must be subject to strong planning controls (215/CC).
- 12.35 Whilst Policy AG8 is welcomed, there ought to be policy provision for preventing the unacceptable escalation of equestrian activities (215/64).

Assessment and Conclusions

12.36 The restructuring of Policy AG7 in its second alteration appears to meet, for the most part, the criticisms that the Policy is unduly restrictive on retailing and is not compatible with the theme of rural diversification, which I accept features strongly in PPG7. In particular, the main influencing elements of control are in the size of the unit rather than the origin of the

¹ This 1992 PPG has been replaced by PPG7 (1997) *The Countryside - Environmental Quality and Economic and Social Development*, the main references to farm diversification being made in paragraphs 3.1, 3.2, 3.4 and 3.14.

² ALT/AGRICULTURE/007 (CD056, page 167).

³ ALT2/AGRICULTURE/004 (CD057, page 21).

goods sold, and the requirement that existing buildings be used. Thus the question as to whether the goods are produced on the farm, locally or further afield is not relevant. In my view the Policy as so amended is supportive of rural diversification objectives.

12.37 I do not conclude however that such an amendment to Policy AG7 would, in the words of Counter-objection 215/CC, give rise to a considerable increase in farm retailing. Whilst in theory the amended Policy could allow planning permission to be granted for retailing to take place on every farm provided that the criteria in the Policy were met, I do not believe that in reality either the pressures for farm diversification or market demand would result in such a situation. In any event, even the cumulative impact of a number of such small units is unlikely to be very great. I therefore see no objection to Policy AG7 in the form most recently proposed by the Council.

12.38 On the issue of rural diversification and regeneration generally, I accept that the Agriculture Section of the UDP does not contain any policy other than Policies AG7 and AG8 which could be said expressly to encourage this theme. However, as most of the rural area in the Borough lies within the Green Belt, policies in that Chapter are also relevant. Policies GB3⁴, GB6 as amended⁵ and GB8⁶ all provide opportunities for development which could support the rural economy. Given the restrictions on development in the Green Belt imposed by national planning policy as well as the UDP I consider that this policy provision as well as Policies AG7 and AG8 provide sufficient scope for business and other initiatives which could play a role in the rural area.

12.39 A published change to Policy AG8 omits 'normally'⁷. The Policy forms the basis of firm control over development for equestrian purposes; as horses require stabling and other facilities it seems to me that a significant escalation in equestrian activity is likely to give rise to proposals for further development, in which event Policy AG8 would come into force. I do not therefore consider any further policy related to horses to be necessary.

Inspector's Recommendation

12.40 I recommend that the UDP be modified by the amendment of Policies AG7 and AG8 in accordance with ALT2/AGRICULTURE/004 and ALT/AGRICULTURE/009, but that no further modification be made in response to Objection 215/64 or Counter-objection 215/CC.

⁴ Policy GB3 - Re-use of Buildings in the Green Belt, as proposed to be amended by ALT/GREEN BELT/003 (CD056, page 49) and ALT2/GREEN BELT/002 (CD057, page 6).

⁵ Policy GB6 - Development in Infill Villages, as proposed to be amended under ALT2/GREEN BELT/006 (CD057, page 10).

⁶ Policy GB8 - Guidelines for Major Developed Sites in the Green Belt, as proposed under ALT/GREEN BELT/009 (CD056, page 56).

⁷ ALT/AGRICULTURE/009 (CD056, page 169).