

## **Inspector's Q98**

I would welcome the Council's observations on the representations which comment on the soundness of policy NE8; 800 Mark Rose of Define on behalf of Bovis Homes, 1535 Alastair Bird of Barton Willmore on behalf of Catesby Estates Ltd, 1603 Neil Tiley of Pegasus Group on behalf of Waldrige Garden Village Consortium, 1641 Nicole Penfold of Gladman Developments Ltd, 1707 Cameron Austin-Fell of RPS Planning and Development on behalf of Richborough Estates, 1783 Tina Pearsall of Cerda Planning Ltd, 1843 Tim Northey of Rectory Homes Limited, 1942 Laura Humphries of Pegasus Group on behalf of CALA Homes.

## **Representations/Responses**

### **800 Mark Rose of Define**

Policy NE8 seeks to "protect the best and most versatile farmland" and establish onerous tests for development proposals without regard to the relative scale or actual implications of the potential loss. That policy approach is unduly restrictive and goes far beyond the terms of paragraph 112 of the NPPF that simply requires the District Council to take account of the economic and other benefits of the best and most versatile agricultural land, and as such clearly does not prohibit against its loss as Policy NE8 seeks to. As a result, the application of Policy NE8 will inappropriately prevent /delay otherwise sustainable development.

### **AVDC Response:**

Para 112 of the NPPF requires it to be demonstrated that the significant development of (best and most versatile) agricultural land is necessary. The NPPF is however mute on how that demonstration should be achieved. Therefore development will be justified where it is required but it is effectively over to the Local Plans to set out how that justification is met. The VALP proposes the two tests in criteria (a) and (b) provide the justification. The tests are not considered to be onerous or unachievable. Criterion (a) enables the developer to make it clear there are no other suitable sites available of poorer agricultural land quality and is supported by the second sentence of paragraph 112 in the NPPF. Criterion (b) requires a statement on the benefits of the proposed development and how they outweigh the harm of the loss of significant agricultural land. This mirrors the reference to comparable benefits of agricultural land in paragraph 112 of the NPPF. There is considered to be great scope for what the potential benefits might be and so this clause is not onerous.

### **1535 Alastair Bird of Barton Willmore on behalf of Catesby Estates Ltd**

Policy NE8: Best and Most Versatile Agricultural Land Unless allocated for development within the Vale of Aylesbury Local Plan, draft Policy NE8 explains that

AVDC will seek to protect best and most versatile (BMV) agricultural land for the longer term. Where development involving best and more versatile agricultural land is proposed, the District Council require BMV land to be preferentially used as green open space and for built structures to be avoided.

Where development would result in the loss of best and more versatile agricultural land, planning consent will not be granted unless there are no other suitable sites of poorer agricultural quality that can accommodate the development, and the benefits of the proposed development outweigh the harm resulting from the significant loss of agricultural land.

The approach put forward by the District Council at draft Policy NE8 is not however considered to be consistent with national policy – namely paragraph 112 of the NPPF. For reference, paragraph 112

states that ‘... where significant development of agricultural land is demonstrated to be necessary, local planning authorities should seek to use areas of poorer quality land in preference to that of a higher quality.’

There is therefore no requirement for development proposals to be designed so that BMV land is maintained as green open space. Indeed, the location of green open space would need to take into account a range of design requirements – including the need to provide a buffer from existing dwellings, or to deliver a focal point within a development. Requiring green open space to be located on areas of BMV agricultural land is therefore likely to result in poorly designed development – which would clearly be inconstant with the aims of the NPPF. Moreover, it is unclear as to what practical use there would be for retaining BMV land as green open space given that its agricultural use would be lost in any event.

Notwithstanding the above, it is considered that the proposed criteria at draft Policy NE8 are inflexible and inconstant with national policy. In particular, it is unclear at criterion (a) as to what other suitable sites would need to be taken into consideration. Taking Buckingham as an example, development anywhere outside the existing settlement boundary is likely to lead to the loss of BMV agricultural land.

With this in mind, it is considered that draft Policy NE8 should be amended as follows: “The Council will take into account the economic and other benefits of the best and most versatile agricultural land. Where significant development involving best and most versatile agricultural land is proposed, the Council will seek to use poorer quality land in preference to that of higher quality.” The proposed amendments would ensure that the policy accords with paragraph 112 of the NPPF.

Moreover, it is noted that Natural England’s guidance note, ‘Agricultural Land Classification: protecting the best and most versatile agricultural land’ (December 2012), advises that they would only provide a consultation response for applications involving the loss of over 20ha of BMV land. As such, it is considered that the

supporting text to Policy NE8 should align with Natural England's guidance and define 'significant development' of BMV land as schemes involving sites of over 20ha.

#### **AVDC Response:**

The Policy in seeking to retain the areas of a site containing best and more versatile agricultural land for green open space and avoiding built structures is trying to retain the BMV land free from development so it possible in the future to return to agricultural use. In larger developments this could be considerable areas of land. This is considered to be a purpose consistent with NPP para 112 as it is appropriate to apply the preference for the development of lower quality farmland within a development as well as in the initial choice of a suitable development site. The policy does nevertheless allow for exceptions to the overall approach by having two criteria to be taken into account. The second criteria particularly allows for the design related conflicts outlined in the representation to be addressed.

On the matter of Policy NE8 and flexibility – it is considered the policy in its criteria is flexible. AVDC already accepts in making an examination change that the loss of BMV land has to be 'significant' as set out below. Criterion (a) enables the developer to make it clear there are no other suitable sites available of poorer agricultural land quality and this matches the requirement in the NPPF. Criterion (b) requires a statement on the benefits of the proposed development and how they outweigh the harm of the loss of significant agricultural land. There is considered to be great scope for what the potential benefits might be from development and so this clause is not onerous.

In terms of meeting criterion (a) on the suitable site search, the extent of the search would be determined on a case by case basis but would be considered to be the area around the settlement concerned. It may be that there are no suitable sites of poorer Agricultural land Quality.

AVDC accepts the point that the NPPF para 112 refers to 'significant development' of agricultural land and that the word 'significant' should be inserted into the second line of the drafted Policy NE8 between 'Where' and 'development'. This would bring Policy NE8 into line with the NPPF paragraph 112.

It is not considered necessary for the VALP to prescribe what 'significant loss' would be i.e. how many hectares is significant – case law can change and what is 'significant' should be determined at the time of the planning application on a case by case basis which would also need to take into account the quality of the agricultural land in question to establish significance of any loss (though case law would inform this).

**1603 Neil Tiley of Pegasus Group on behalf of Waldrige Garden Village Consortium**

Policy NE8 proposes to restrict development which results in the loss of any BMV agricultural land, unless there are no sequentially preferable sites and the benefits outweigh the harm.

This is not consistent with paragraph 112 of the NPPF, which restricts only significant development affecting BMV agricultural land, and which does not apply a strict sequential test as proposed by Policy NE8. The policy must be redrafted to accord with the NPPF.

#### **AVDC Response:**

As stated above it is proposed to modify the policy to include the word 'significant'. Para 112 of the NPPF does require it to be demonstrated that the significant development of (best and most versatile) agricultural land is necessary. Therefore there is a justification required but the NPPF is mute on how this should be determined - it is effectively over to the Local Plans to set out how that justification is met. The VALP proposes the two tests in criteria (a) and (b) to provide the justification. The tests are not considered to be onerous or unachievable. Criterion (a) enables the developer to make it clear there are no other suitable sites available of poorer agricultural land quality which accords specifically with the NPPF. Criterion (b) requires a statement on the benefits of the proposed development and how they outweigh the harm of the loss of significant agricultural land. There is considered to be great scope for what the potential benefits might be from development and so this clause is not onerous. Overall the policy does not seek to prevent the loss of agricultural land as suggested in the representation but rather seeks to ensure that any loss is justified in accord with the provisions of the NPPF through a defined assessment process.

#### **Representation 1641 Nicole Penfold of Gladman Developments Ltd**

Policy NE8 relates to development within areas of Best and Most Versatile (BMV) agricultural land. Gladman strongly object to NE8 (b) which states that planning consent will not be granted unless "there are no otherwise suitable sites of poorer agricultural quality that can accommodate the development."

This effectively would require the sequential test to be undertaken in relation to BMV. This is not appropriate and may act to restrict otherwise suitable development coming forwards. There is no requirement in national policy for a sequential test to be applied to BMV, this element of Policy NE8 is unsound as it is not justified and should be removed in its entirety.

#### **AVDC Response:**

Para 112 of the NPPF does require it to be demonstrated that the significant development of (best and most versatile) agricultural land is necessary. Therefore

there is a justification required in the first place and as the NPPF is mute on how this should be determined it is effectively over to the Local Plans to set out how that justification is met. The VALP proposes therefore criteria (a) and (b) two tests to be met to provide the justification. The tests are not considered to be onerous or unachievable. Criterion (a) enables the developer to make it clear there are no other suitable sites available of poorer agricultural land quality. Criterion (b) requires a statement on the benefits of the proposed development and how they outweigh the harm of the loss of significant agricultural land. There is considered to be great scope for what the potential benefits might be from new development and so this clause is not onerous.

### **1707 Cameron Austin-Fell of RPS Planning and Development on behalf of Richborough Estates**

The policy is inconsistent with the NPPF which does not protect BMV land; it merely requires LPAs to take into account the economic and other benefits of BMV land. The policy should be re-written. The policy needs to be rewritten against the context of what is considered to be significant loss, which has been confirmed through case law to be 20 hectares or greater. This consideration should be fed into the context of the policy.

### **AVDC Response:**

Para 112 of the NPPF does require it to be demonstrated that the significant development of (best and most versatile) agricultural land is necessary. Therefore there is a justification required in the first place and it is effectively over to the Local Plans to set out how that justification is met.

AVDC accepts the point that the NPPF para 112 refers to 'significant development' of agricultural land and proposes that the word 'significant' should be included into the second line of the drafted Policy NE8 between 'Where' and 'development'. This would bring Policy NE8 into line with the NPPF paragraph 112.

It is not considered necessary for the VALP to prescribe what 'significant loss' would be however i.e. how many hectares is significant – case law can change and what is 'significant' should be determined at the time of the planning application on a case by case basis which would also need to take into account the quality of the agricultural land in question to establish significance of any loss (though case law would inform this).

### **1783 Tina Pearsall of Cerda Planning Ltd**

The provisions of Policy NE8 are inconsistent with the NPPF. Whereas the local plan policy seeks to protect best and most versatile farmland for the longer term, the NPPF requirement is to take into account the economic and other benefits of best and most versatile agricultural land.

As drafted therefore, Policy NE8 goes beyond the requirements of the NPPF and as a consequence is unacceptable and the subject of objections.

It is also the case that the NPPF does not require that the benefits of the proposed development outweigh the harm resulting from the significant loss of agricultural land. Where best and most versatile land is to be lost, this is to be weighed in the balance but it is not necessary for the benefits of housing to outweigh the loss of best and most versatile agricultural land as a simple two sides of the equation approach.

#### **AVDC Response:**

Para 112 of the NPPF does require it to be demonstrated that the significant development of (best and most versatile) agricultural land is necessary. Therefore there is a justification required in the first place and as the NPPF is mute on how this should be determined it is effectively over to the Local Plans to set out how that justification is met. The VALP proposes therefore criteria (a) and (b) two tests to be met to provide the justification. The tests are not considered to be onerous or unachievable. Criterion (a) enables the developer to make it clear there are no other suitable sites available of poorer agricultural land quality. Criterion (b) requires a statement on the benefits of the proposed development and how they outweigh the harm of the loss of significant agricultural land. There is considered to be great scope for what the potential benefits might be and so this clause is not onerous.

#### **1843 Tim Northey of Rectory Homes Limited**

This policy concerns the protection of the best and most versatile requires that where the development of agricultural land is necessary, poorer quality land is preferential over higher quality land. However, the drafted policy does not accord with the NPPF as it omits the reference to these circumstances involving "significant development of agricultural land" (Paragraph 112). The policy therefore needs amending to include this reference to ensure consistency with the NPPF.

#### **AVDC Response:**

Agree that the NPPF para 112 refers to 'significant development' of agricultural land and propose that the word 'significant' should be inserted into the second line of the drafted Policy NE8 between 'Where' and 'development'. This would bring Policy NE8 into line with the NPPF paragraph 112.

#### **1942 Laura Humphries of Pegasus Group on behalf of CALA Homes**

Policy NE8 proposes to restrict development which results in the loss of any BMV agricultural land, unless there are no sequentially preferable sites and the benefits outweigh the harm.

This is not consistent with paragraph 112 of the NPPF, which relates only to significant development affecting BMV agricultural land, and which does not apply a strict sequential test as proposed by Policy NE8. The policy must be redrafted to accord with the NPPF.

**AVDC Response:**

The Council agrees that the NPPF para 112 refers to 'significant development' and proposes that the word 'significant' should be inserted into the second line of the drafted policy between 'Where' and 'development'. This would bring Policy NE8 into line with the NPPF paragraph 112.

**Map on Agricultural Land Classification for Aylesbury Vale**

A map is attached separately to the AVDC response to aid the inspector showing the Agricultural Land Classification in the district including where detailed ALC studies have been completed to inform the Local Plan preparation process. It can be seen that detailed studies AVDC has access to are only at strategic settlements and so most of the district is using the very high level Natural England data from surveys in the late 1980s and late 1990s.