

February 2004

PEMBROKESHIRE COAST
NATIONAL PARK AUTHORITY

Low Impact Development - Further Research

Final Report

Baker Associates
The Crescent Centre
Temple Back
Bristol
BS1 6EZ

t 0117 933 8950
e all@bakerassoc.com

Contents

	Page
1 Introduction	1
2 The nature of Low Impact Development	3
3 LID and the current planning agenda	6
4 Dealing with LID in the planning system	11
5 Using policies	19
6 Developing an approach to assessing and determining LID proposals	24
7 Making decisions on LID	35
8 Conclusions on proposed approach	42

1 Introduction

Task

- 1.1 Development in the open countryside is strongly resisted by the land use planning system in Wales as in the rest of the UK. Yet there are some proposals for development that on their own would have little impact on their surroundings or on the environment and resources more generally, and there are some forms of development that would bring real benefits. There are potential benefits to the environment, society and the economy through the achievement of sustainable development. These pose the question of whether the planning system could be managed in such a way that some development in the countryside that would currently be resisted could be allowed.
- 1.2 Some forms of development in the countryside have been categorised as Low Impact Development (LID), and this report is about whether this category of development can be defined, and whether with suitable definition the planning system can distinguish this development from other unwanted development and allow it to take place.
- 1.3 The Brief for the project requires the development of a policy basis for the consideration of LID. The report does not set out to consider whether LID is something that is wanted, though some incidental discussion of this question is inevitable. The report is primarily concerned with the 'how' rather than the 'whether' of LID.
- 1.4 The idea of LID is mainly due to Simon Fairlie whose book 'Low Impact Development', 1996, establishes the term and provides the definition of LID as *'Development that through its low negative impact, either enhances or does not significantly diminish environmental quality'*.
- 1.5 This definition is returned to in developing proposals in this report.
- 1.6 A great deal of very good work has already been done on the subject of LID in the form of a Countryside Council for Wales research by UWE/LUC¹. This report provides this study with essential background material, including from case studies on how the planning system has engaged with the issues of LID. A set of characteristics is suggested as the basis for determining whether something is LID and hence as a way of defining something which may be acceptable in the development control system.
- 1.7 Putting this into practice is acknowledged to be a difficult task. Distinguishing a particular form of development from others when the reality is a continuous spectrum of activity embracing many different features, and relating this to a process which is at the same time both discretionary and legalistic, is a complex problem. Rather than there appearing a solution which is natural and inevitable, the subject is in the realm of 'fuzzy logic'.

¹Low Impact Development – Planning Policy and Practice'(LID) research project for CCW by UWE/LUC

- 1.8 At the heart of the difficulty posed by the consideration of LID and planning is this. The planning system has a fundamental role in the promotion of sustainable development and LID is presented as a form of sustainable development, yet LID encompasses elements, notably housing, that are most fiercely resisted in the open countryside by use of the planning system, and with a concern for sustainable development cited amongst the justification for doing so. The task set for this project by the client and Brief is to find a practical way to resolve this paradox.
- 1.9 The subject however is both fascinating and vital. Whilst the subject may seem very specific (with very few LID proposals for instance) it actually connects with many of the most interesting and challenging questions facing the makers and managers of the planning system today. The issues discussed in this report have far wider implications for the planning system than a requirement to deal with a particular type of development.

Approach

- 1.10 The work has been done by:
- examination of the previous work on the subject by UWE / LUC and following up some of the lines of thought in this report
 - a workshop involving members of the Steering Group, policy and development control officers from a number of planning authorities including National Parks, and representatives of other organisations, with discussion prompted by case study examples and scenarios.
- 1.11 The core of the study however has been considerable debate and discussion amongst the team members on issues raised by the possibility of developing a LID policy.

Client and Steering Group

- 1.12 The work has been commissioned by Pembrokeshire Coast National Park Authority and paid for the National Park Authority, Welsh Assembly Government and Countryside Council for Wales
- 1.13 The work has been undertaken with the benefit of a Steering Group with representatives from:
- Pembrokeshire Coast National Park Authority
 - Countryside Council for Wales
 - Vale of Glamorgan Council
 - Welsh Assembly Government.

- 1.14 The work and contribution of the Steering Group is gratefully acknowledged. The content of the report however, is the responsibility of the independent consultants.

Report

- 1.15 Notwithstanding the excellent advice provided by the earlier work, and whilst seeking to avoid repetition, the work done in preparing this report has inevitably revisited the complex issue of what it is that the planning system could be seeking to accommodate in situations where development would normally be refused and in a context where strong concerns at the implications of an apparent relaxation of past policy will be encountered. This discussion is in section 2, and is followed in section 3 by a reflection on how the emerging concept of LID relates to the many other environmental, economic and social issues currently challenging the planning system in its dealings with rural areas and with planning for sustainable development.
- 1.16 The study is about finding tools and mechanisms that the planning system can use to accommodate or promote and control certain activities, and Section 4 of the report introduces the parts of the planning toolkit. Section 5 looks in more detail at how the development control decision process works, and at whether the attempt to accommodate LID raises more fundamental questions about the ability of planning to deliver more sustainable development.
- 1.17 Section 6 develops an approach to the consideration of LID and the determination of planning applications for the Steering Group to consider. This includes clarification of the tests that LID must meet and the way that a development plan policy could be drafted, but it sets these in the context of a process that needs to be followed in dealing with proposals for LID.
- 1.18 Section 7 sets out how decisions on LID could be made and develops the policy requirement. Section 8 sets out the conclusions and recommendations from the work.

2 The nature of Low Impact Development

Introduction

- 2.1 The requirement to accommodate LID within the planning system begins with agreement that there may be something that it would be desirable to accommodate that is not generally being accepted under current policies. This is the position set for the project by the Brief. Identifying what it is that the planning system is trying to provide for in a way that distinguishes this from other forms of development that remain unwanted in the countryside is an essential part of the development of an appropriate policy context.
- 2.2 What features strongly in most thinking on LID is that LID involves the developer / occupier in a high degree of engagement with the land and the resources that working the land can provide, something that can represent a very responsible

- approach to the use of the planet's resources. Significantly the relationship with the land may also establish the need to be in that location rather than anywhere else. These life choices may also enable people to meet their accommodation needs when they are excluded by cost and availability from doing so by conventional means.
- 2.3 These are characteristics that chime with aims that are desirable because they promote greater sustainability, such as having a small environmental and resource 'footprint', and possibly meeting social and economic needs locally.
- 2.4 The range of activity that may come into a category of LID is considerable as is documented by the large number of examples in 'Sustainable Homes and Livelihoods in the Countryside', produced by Chapter 7 and the PPG7 Reform Group in January 2003. These include people pursuing small holding, permaculture, horticulture, coppicing, woodland crafts, and organic box schemes. The work of Chapter 7 acknowledges that an accurate indication of the numbers involved in pursuing LID cannot be made, though this group has already worked with many hundreds of people with varying levels of commitment to the ideas, and wider recognition and possible acceptance through formal processes of the life choices inherent in the LID concept may encourage more participants.
- 2.5 There are a number of reasons why lifestyles of this type and range might be recognised and actively encouraged, or at the very least acknowledged by the system in place for dealing with development, if only by providing a clear framework for their consideration. What is discussed under the heading of LID has little impact on many of the matters that planning is concerned with, such that many LID activities fall outside the statutory definition of development, and in most respects it is a form of development that could be regarded as insignificant. It may also bring benefits to the environment and in terms of resource conservation, and local social and economic benefits.
- 2.6 There is a fundamental characteristic of LID however, that is in conflict with the way that planning policy is generally exercised, and this is that it provides a place of residence for its proponents. The stark conflict that is at the heart of this work therefore, is between the normal resistance to residential development in the countryside and the possibility of accommodating activity that may be in every other respect either harmless or desirable, or most likely be at some point along this spectrum.
- 2.7 In determining the merits of a proposal, the planning authority may well find itself trying to distinguish between supporting an activity of which a dwelling is a necessary part, and resisting a proposal for a dwelling which the proponents suggest is made acceptable by the inclusion of 'sustainable' features.

Characteristics of LID

- 2.8 Earlier work exploring LID and its place in the planning system has used characteristics to distinguish what is and what is not LID. 'The Land is Ours' suggested 15 criteria for sustainable development in 1999. More detailed and slightly different criteria are included in the UWE/ LUC research.

2.9 The types of characteristics that are identified as present in LID and which are seen as positive in terms of their contribution to sustainable development include:

- integration into the local environment, economy and community
- minimal environmental impact on the land
- a direct relationship with the husbandry of the land
- the pursuit of sustainable principles in terms of agriculture, forestry and permaculture
- a contribution of the activities of the site to providing a livelihood for its occupiers
- the provision of housing that the occupants can afford
- the minimal use of motor vehicles
- the 'reversibility' of any physical manifestation of the activity, with readily demountable structures for instance
- the use of building materials which are reused and / or locally derived, contributing to low resource consumption and to the structures that are visually unobtrusive buildings of a scale appropriate to the enterprise
- the incorporation of technologies and practices for the minimisation of waste, water and energy consumption, and the use of renewable energy
- the incorporation of ecological management, habitat creation and conservation
- the encouragement of educational access
- management by a trust, cooperative or other body who will ensure continuing control
- coordinated by an integrated environmental site management plan.

LID and sustainable development

2.10 The UWE / LUC research on Low Impact Development – Planning Policy and Practice (Dec 2002) provides a comprehensive overview of the state and potential of LID in the rural areas. It concludes that there are number of benefits that LID may bring. Primary among these is the contribution to sustainability, particularly in terms of its environmental and social objectives. The report concludes that *'what is striking is that LID makes positive contributions to all three aspects of sustainability together without trading off against each other.'*

- 2.11 When the possible accommodation of LID is to be determined through a regulatory system that seeks to place a contribution to more sustainable development above all else, this certainly is a striking finding. It is all the more so in that the integration of, rather than the balancing or trading of, social, environmental and economic concerns is the goal that is proving elusive so far in planning, but which is one of the aspirations of the current reforms of the planning system.
- 2.12 The remainder of the report examines how this combination of residential activity and apparent exemplar of sustainable living can engage with the planning system, following a short commentary on the relationship between LID and many other current issues for the countryside and sustainability, and hence for spatial planning.

3 LID and the current planning agenda

Introduction

- 3.1 In the cases that have been examined prior to this study and considered for the current work, the 'low impact' by which proposals are characterised will frequently be as a consequence of the temporary or reversible nature of the structures involved, the use of appropriate and more resource-benign technologies, and the lifestyle choices of the occupants.
- 3.2 Seen in this way, the issue of LID may seem insignificant to a very busy planning system – there are likely to be very few proposals that would come to be considered by a LID policy. It is noted however that although the number of applications may be small, the resource implications for the planning authority in dealing with each application may be considerable.
- 3.3 Whether or not the number of credible LID applications is very low, the issue of LID does become very interesting for the planning system when the links that the concept has with several very important agendas begin to be explored. There are many other issues arising in the way that we plan for rural areas that the debate about LID may throw some light on, and there is a concern for the planning system generally to help bring about greater sustainability, which LID is said to do. These are examined in this section.

Development in the countryside

- 3.4 Strict control of development in the open countryside in order to prevent the spread of urban areas and in order to protect its character was part of the origin of land-use planning and remains one of its basic planks. The prevention of development in the countryside is in some respects consistent with the promotion of greater sustainability, and so the adoption of a contribution to more sustainable development as the overarching objective of planning has maintained the desire to prevent development in the countryside. Sustainability has extended the reasons for resisting development to include a concern to reduce the adverse consequences of travel, and particularly travel by car. By preventing

development in locations that are remote from workplaces, facilities and services, land-use planning can help to reduce the need to travel.

The rural agenda

3.5 The current agenda of many concerned with rural areas, and particularly the way that we plan for rural areas, includes:

- bringing about agricultural diversification, enabling a unit that is primarily agricultural to achieve a higher financial turnover, enabling people who provide stewardship of the land and other benefits to the locality, to continue to support themselves
- the broader economic aim of bringing more economic activity to the countryside, that is not necessarily land-based or even rural in nature, in order to increase the economic / social well being of rural communities, enable people to stay in their communities, and achieve greater self-containment in access to work and services, for instance
- how different lifestyles are accommodated in the planning system, with gypsies and travellers as examples, with the use of policies that are sometimes written in terms of land use issues, but can harbour lifestyle prejudices
- agricultural dwelling occupancy, whereby there is a test for the acceptability of a new dwelling related to an agricultural unit, which usually requires demonstration the need for someone to be based on the site of a holding that is viable, and with no other means of obtaining accommodation, but which may acknowledge only a limited range of rather traditional agricultural or horticultural activity²
- the desire to achieve more housing within communities that is affordable to 'local people' – people with longstanding links with the community and/or whose residence would bring social and economic benefits to the community – through affordability or locality tests and planning obligations, and exceptions policies
- the aim of greater social mix in communities, including in communities likely to become entirely populated by wealthy 'dormitory dwellers' / retirees, or not occupied at all as a consequence of second dwelling acquisition.

3.6 The previous UWE/LUC research concludes that LID is not any of the forms of development implied by these aspects of the rural planning agenda, though the links are strong. This point can be reinforced by this project by commenting on the relationship of LID to the specific types of development currently provided for in the planning system.

² This is the subject of 'Essential Dwellings in the Open Countryside', an on-going research project by Land Use Consultants as part of the Welsh Assembly Government's Wales Planning Research Programme

- 3.7 On affordable housing, LID may provide a way of meeting housing needs for some people with particular lifestyles and forms of livelihood, and may do so at less cost by effectively removing the high value attributable to any land with residential permission in a rural area from the equation, as well as by using low cost building techniques. Its contribution to this general need will be very limited however, and probably irrelevant in relation to the need that may exist. LID is not the way of overcoming rural housing accessibility problems.
- 3.8 In terms of economic diversification, LID may make a small scale contribution to the economy of an area where work is scarce and where work adding directly into the local economy is even scarcer. It may do so not only by providing a direct living to its proponents but by involvement in farmers markets, or in processes requiring a contribution from others with complementary skills, or by providing skills training. The need for a positive contribution is discussed later in this report. Again however, the scale of contribution relative to need is likely to be very low, and the point of considering LID is not to see it as a means to deliver a contribution to the objective of strengthening and diversifying the rural economy.
- 3.9 The relationship with the way that the planning system deals with the need for dwellings to support agricultural activity where dwellings would normally be resisted needs particular consideration. Though LID is seen as separate from traditional agricultural activity, most commentary on the subject suggests that the nearest approximation of some of the LID policies that are being tried out is as a lowering of the hurdle for agricultural occupancy in return for increased stewardship, more benign resource use or valued sustainability demonstration. Though not expressed in this way, this is effectively a change in the test of viability by recognition of a willingness / desire for a different economic requirement from the occupancy.
- 3.10 What is being considered by this report as a policy basis LID is different from the accommodation within the planning system of conventional dwellings by the use of agricultural occupancy conditions however. If what is proposed could be acceptable under the agricultural dwellings policy, this is the way that it should be dealt with. This matter is considered in section 6.
- 3.11 LID may be associated with an existing agricultural holding, grouped with the buildings to lower its impact, and sharing some of its resources such as transport and tools.
- 3.12 It is noticeable that whilst not applicable in Wales, the current consultation on PPS7: Sustainable Development in Rural Areas, proposes that in the policy statement the financial test for an agricultural dwelling should recognise subsistence agriculture, with the statement from Annex A that: *'some enterprises which aim to operate broadly on a subsistence basis, but which nonetheless provide wider benefits (for instance in managing attractive landscapes or wildlife habitats) can be sustained on relatively low financial returns.'*
- 3.13 This is very positive as far as thinking about LID is concerned. The use of the word 'attractive' however, is a reminder that potentially the most progressive

concept of all – greater sustainability – remains bound in some thinking by the traditional planning view of the environment as something to be valued for essentially aesthetic reasons, a view that pervades much of the work of the groups that can be expected to lobby most strongly against any recognition of LID in the planning system. It may also be the case that not just attractive landscapes need to be managed in order to improve them and contribute towards greater sustainability in the wider sense.

Sustainable development

- 3.14 A contribution to more sustainable development has emerged as the overarching objective of the planning system in the last decade, and is set to become its statutory purpose with the enactment of the Planning and Compulsory Purchase Bill, most probably early in June or July 2004.
- 3.15 The Government of Wales Act 1988 section 121 already places a statutory responsibility on the Assembly to *'make a scheme setting out how it proposes, in the exercise of its functions, to promote sustainable development'*, and this encompasses the planning function. The Welsh Assembly Government is required to keep the scheme under review yearly and publish a report containing an assessment of how effective its proposals have been in promoting sustainable development. In the joint statement by the leaders of the partnership parties of the Welsh Assembly released in October 2000, Rhodri Morgan and Michael German agreed to: *'...promote a strong, modern and knowledge-based economy, a cleaner environment, thriving communities in both rural and urban Wales, and a society of opportunity and inclusiveness...'*³
- 3.16 Section 38 of the Planning and Compulsory Purchase Bill (2002) requires that *'the person or body must exercise the function with a view to contributing to the achievement of sustainable development'*. This should be done in Wales having regard to guidance issued by the National Assembly for Wales. Planning Policy Wales expands on the Assembly's commitment to sustainable development. This declared goal has huge practical implications for spatial planning, and two strands need comment here.
- 3.17 The first is that the essence of promoting sustainable development through planning must be in finding ways for development choices and planning decisions to achieve the integration of social, environmental and economic objectives. The implications of this need for integration in order to maintain and increase social, environmental and economic capital are discussed more in section 4 of this report.
- 3.18 Second, a practical way that more sustainable development can be brought about is for the planning system to require greater sustainability performance from all development that takes place. This would be in terms of for instance:
- water conservation

³ Morgan, Rhodri and German, Michael. 'Putting Wales First: A Partnership for the People of Wales.'
<http://www.wales.gov.uk/organicabinet/content/putting.html#1>.

- reduced travel demands
 - energy conservation and energy generation from renewable sources
 - waste minimisation and recycling
 - the use of materials that are variously recycled, reusable, and have low embodied energy or are from sustainable sources.
- 3.19 There are moves to incorporate such requirements into the planning system, though good examples remain innovatory rather than mainstream.
- 3.20 It is noticeable that for those forms of development that are currently treated as exceptions to the general presumption against development in the countryside, such as some proposals for agricultural diversification, the conversion of existing buildings for economic purposes and affordable housing on exceptions sites, and hence which invite comparison with LID, the achievement of high performance in terms of low energy use and resource conservation may be sought as desirable add-ons, but are not usually prerequisites for planning permission.

Other issues for the planning system

- 3.21 There are other issues that changes to the planning system are seeking to address that are not specific to the countryside, but where there is again an overlap with the debate about LID. This might be because what is put forward as the way of dealing with LID may have something useful to contribute in these areas, or because the aspirations to assist LID may conflict with other aspirations. Two examples from the current agenda are as follows.
- 3.22 First is the aim for greater participation in planning, with the specific desire for local views arrived at through real, inclusive and informed participation to have considerable weight in making decisions. This may lead to greater recognition of ways in which affordable local housing and social needs have to be addressed in small communities, and a greater appreciation of local economic activity, though it may also further bolster the tendency for the 'no-change' agenda to prevail.
- 3.23 Second, a declared aspiration of the planning reforms is to greatly reduce the policy content of development plans – the wish to avoid having 'a policy on everything', or for plans to be 'development control rulebooks' is regularly repeated. These proper aspirations may seem at odds with the task set for this project of devising policies that are targeted at a very particular form of development. These two aims may not be as contradictory as they seem however, and though this is a developing area, it may be that the way LID comes to be dealt with could be a forerunner of the type of smart process and performance policies that are comprehensive and strategic in scope and by which the greater part of the development control function of development plans is discharged. Further comment on this point is made in the final section of the report.

Comment

- 3.24 Some of the issues commented on in this part of the report are matters that need further consideration in developing appropriate ways of planning for a more sustainable countryside, aside from the consideration of LID. LID might be seen as a form of experimentation in the planning system, in relation to, for instance, planning for rural areas, the mainstreaming of sustainable development, and the types of decision process provided for in plans (something returned to in section 5 of the report). It might be concluded too that seeking to address some of these quite fundamental issues by setting out a policy providing for the acceptance of individual proposals according to a definition of LID without looking at the implications for the planning system more widely exposes potential difficulties.

4 Dealing with LID in the planning system

Introduction

- 4.1 Whether something constitutes development is determined by the interpretation of the definition of development provided by legislation. If development is proposed, planning permission is required unless the need for planning permission is expressly removed by a statutory instrument. The essence of the plan-led system of development control in Wales is set out in paragraph 3.1 of 'Planning Policy Wales' (2002). Planning applications are to be determined in accordance with relevant policies in the development plan unless material considerations indicate otherwise. Development plans are to conform to national planning policy but can adopt a different approach if they can justify it in terms of the needs of their local area.
- 4.2 National planning policy can be the material consideration that effectively determines the outcome of an application (particularly where this is more recent than the development plan at the local level, or there is no relevant policy at the local level).
- 4.3 There are a number of ways therefore, in which the operation of the planning system can provide for a type of activity to be dealt with, with an interaction between legislative changes such as the creation or modification of a use class, national planning policy, and policies in local formulated development plan. Though these are all substantially dealt with in the UWE/LUC report, some discussion is needed here in order to design an approach that will meet the requirements posed for this study.

Permitted development

- 4.4 Some types of development are deemed not to need planning permission by the provision within a statutory instrument, in this case the General Permitted Development Order, that the particular form of development is permitted development. A Review of Permitted Development Rights has been published in September 2003. This report by Nathaniel Lichfield reviews the GPDO and any issues and problems associated with the current operation of permitted

- development rights. The study does not propose major changes to a regime that appears to operate reasonably well. However, in respect of agriculture it does suggest abolishing permitted development rights on holdings of up to 20 ha and a change the prior approval procedure. Though it considers how to address sustainable development, the report does not discuss LID.
- 4.5 The GDPO provides for different rights in a National Park and also provides for a prior notification system for agricultural buildings and telecommunications development so that they are no longer be entirely outwith the planning system. If the activity proposed falls within the definition of permitted development subject to limitations, this permission has been granted in advance by the Order. No application needs to be submitted, and whilst the activity conforms to the scope of the defined activity, it is not subject to any controls from the planning system. This provision can however, be withdrawn by an Article 4 Direction or a condition attached to an expressed consent.
- 4.6 The types of activity usually benefiting from permitted development rights are generally those where the likelihood of impact or harm is sufficiently low for the burden on all parties of the need for planning permission to not be justified. Categories of permitted development include:
- various agricultural exceptions
 - extensions to existing dwellings and commercial buildings that are small in proportion to the existing unit
 - engineering operations carried out by statutory undertakers to maintain infrastructure and utilities
 - temporary activity, such as markets and outdoor recreational events.
- 4.7 There are some interesting precedents arising from the way that permitted development rights are currently used. It is the case for instance, that some of the activities that do not need planning permission provided they take place for no more than a specified number of days in a year (usually 14 or 28) can have very considerable impacts. These would certainly be examined were an application required and the impact associated with the activity might lead to permission being refused. The use of fields on the edge of villages for car boot sales is a good example of this situation, where the impact on local residents and the level of car travel generated can be considerable. Another example is the exception created by the granting of permitted development rights to agricultural units for the erection of farm buildings. The point is often made that large industrial-style buildings and the vehicle movements associated with them have a significant effect on the character of the area, and can be very intrusive in the countryside.
- 4.8 Arguably development that is of sufficiently low impact could be made permitted development activity as a way of accommodating LID. The inclusion of residential activity and the lack of control by the planning system are likely to make this approach an unattractive one however.

A use class

- 4.9 The opportunity for the definition of classes of use is provided for in the Town and Country Planning Act 1990 and the use classes are defined in the Use Classes Order 1987 and its subsequent amendments. Any material change of use to an activity within a particular use class is development and requires planning permission, but a change to another activity within the same use class is not development and does not require planning permission. The aim of defining use classes is to provide flexibility for operators to vary the nature of their activities, or for different occupiers to use land and buildings in varying ways, whilst avoiding the need for operators and the planning authorities to be involved in time consuming, costly and uncertain administrative and legal processes.
- 4.10 Examples of use classes are those used to distinguish groups of so-called 'high street' uses that are similar to each other, but different from other 'high street' uses. Thus a shop selling groceries is in the same use class as a shop selling antiques, but in a different use class from a café. Planning permission would not be needed for the change from the grocery store to the antiques shop, but permission would be required for the change to a café. The operation of the Use Classes Order is reviewed at intervals to deal with 'new' uses (such as internet cafes), and to ensure that it is contributing to the efficient operation of an effective planning system.
- 4.11 A particular feature of the way that use classes have been defined is that types and levels of impact have been used to categorise activities as similar and distinguish them from other activities. This is a fairly narrow approach in that the types of impact relate to traditional environmental concerns (such as noise and pollution) whilst excluding transport issues for instance, and many of the other concerns of sustainability do not feature explicitly in the rationale for the differentiation.
- 4.12 A further debate that is raised by the current operation of the use classes in the planning system is that over whether local need ought to be a criterion in defining a use class. An example would be the desire for the planning system to be able to distinguish between a use that served local needs and one that did not. The example of the grocery store and the antiques shop is relevant again and pertinent to rural areas. The wish to retain local services may not be able to be well reflected with the planning tools available, and in rural areas there may be a wish to allow residential or economic activity provided it serves local needs, but not if it provides for second homes or incoming workers.
- 4.13 This debate is relevant to LID too, since LID could fall within a use class that encompassed a range of activities defined as serving local social and economic needs, and possibly with little impact on the local environment and on the use of resources.
- 4.14 It must be noted that defining a use class within which LID could lie does not remove the need to grant planning permission in the first place for a reasonably defined activity, though it could be a means of dealing with some of the matters

relating to LID that are often suggested as otherwise being a matter for management plans and legal obligations.

- 4.15 The use of use classes is not something that was considered in detail by the previous work on the subject, and it is not something specifically sought from this study by the Brief for the work.

National planning policy

- 4.16 Depending on the location, and subject to the current planning reforms which are renaming and reallocating responsibility for different levels in the planning system, there are several policy levels that have to work as a set in delivering desirable change and establishing the policy framework for development control. The Planning and Compulsory Purchase Bill applies to Wales, with Part 6 being specific to Wales. The consultation paper 'Planning: delivering for Wales', issued for consultation in January 2002, sets out the Assembly's aspirations to transform and improve the planning system. The planning system in Wales has the significant advantage of there already being only two levels of policy making to be formulated in a complementary fashion.
- 4.17 Policies in development plans at the local level – currently Unitary Development Plans, but to become Local Development Plans – are to have regard to or to conform with policy guidance set out at the national level, unless local circumstances indicate otherwise. There is greater likelihood of development plans containing policies for LID if national guidance at least provides for this to be the case, and a national policy statement could go as far as to encourage that such matters are addressed at the local level.
- 4.18 The 'Planning: delivering for Wales' programme sets out proposals for changes to improve the operation of the plan preparation and planning decision making processes. Specific proposals include the introduction of new style Local Development Plans (LDPs), by changing the UDP regulations at a future date to include the benefits of a more streamlined content and process, whilst minimising the disruption and uncertainty caused by introducing a completely new system of development plans. A review of all the TANs has also been undertaken to establish which ones require urgent revision. The following TANs are currently being revised:
- TAN 5 Nature Conservation and Planning (1996) – scheduled to issue for public consultation in June 2004
 - TAN 8 Renewable Energy (1996) - scheduled to issue for public consultation in 2004
 - TAN 18 Transport (1998) – scheduled to re-issue for public consultation in Winter 2003/04.
- 4.19 TAN 6 Agricultural and Rural Development – is scheduled for review in 2004/05.

- 4.20 There is nothing on LID currently in planning policy in Wales – either in Planning Policy Wales or in TANs, which supplement Planning Policy Wales – and the precedents from other parts of the UK are not strong. PPG7: The Countryside Economic and Environmental Quality does not refer to LID and the current consultation draft of its replacement PPS7: Sustainable Living in Rural Areas, does not either, though the significance of the mention in Annex A of subsistence agriculture has already been remarked upon.
- 4.21 The equivalent guidance in Scotland is interesting in addressing the types of issue being considered here, reflecting the traditions of lowland crofting.
- 4.22 NPPG 15: Rural Development, says that: *'other small scale development with a low impact on the countryside environment, including for example craft homes and workshops, can provide both economic and environmental benefits. The regulation of innovative low impact uses through the planning system is best achieved by a plan-led approach to determine their scale and contribution to wider strategic objectives, followed by implementation by means of conditions and section 75 agreements'*.
- 4.23 The draft revision of NPPG3: Planning for Housing, March 2002, contains reference to NPPG 15. NPPG 15 it says, *'indicates that low-impact development, such as houses incorporating workspace, can provide both economic and environmental benefits. Developments using innovative, energy-efficient technologies with particularly low impacts on the environment may be acceptable at locations where more conventional buildings would not. The control of innovative low impact uses through the planning system is best achieved by a plan-led approach. Proposals should be carefully assessed against specified sustainable development criteria and the wider policy objectives of the development plan.'*
- 4.24 The Scottish guidance appears to make provision for the favourable consideration of LID, using development plan policies as the enabling mechanism. It raises some interesting questions about what it is that is being sought or is regarded as acceptable, with suggestions that the inclusion of workspaces, the presence of innovation, or a combination of economic and environmental benefits would be sufficient to set aside the normal plan-derived presumption against residential development in the countryside. This is an apparently very accommodating approach.
- 4.25 It is important to note that the guidance intends that the way these matters are provided for is by the inclusion of suitable policies in development plans, as is the case with the current project. The Scottish guidance actually provides very little direction to planning authorities about what types of policies they should provide in local plans or assistance to the planning authorities in the detailed drafting of appropriate policies.
- 4.26 A review of plans in Scotland to see how this guidance is being used and interpreted has not been carried out for this study.

Development plan policies

- 4.27 The planning system is a plan-led in that applications are to be determined in accordance with policies set out in development plans that have been prepared by processes involving public consultation. General advice has been that plans should contain policies that enable any type of application that can reasonably be expected to arise, to be considered, for the public to gain some certainty about what is or is not likely to happen in their area and for prospective applicants should be able to obtain guidance from the plan as to how their aspirations are likely to fare in the planning process.
- 4.28 Policies in plans variously deal with particular categories of development – residential conversions or amusement arcades for instance – or matters which might be affected by development – features of archaeological interest or sites with nature conservation value for instance.
- 4.29 Where there are no relevant policies in development plans, or in the more frequent case where there are several policies appearing to pull in different directions in relation to a development proposal, the determination of an planning application is to be ‘on its merits’. In such circumstances – arguably the majority of cases – the much cited statutory weight of the development plan does not apply, although courts have held that there may be a lead policy.
- 4.30 The reasons for including policies in a plan include:
- to assist in promoting activity that the planning authority wishes to see
 - to be clear what is acceptable and what is not, and to be able to distinguish fairly and consistently between these categories
 - to assist with enforcement activity.
- 4.31 The general characteristics that any policy in a development plan should have, and hence which apply in this case, are that good policies are ones which:
- add value
 - are clear and precise in setting out the tests that will be applied in the consideration of a development proposal
 - are necessary and appropriate at that level in the planning system, neither duplicating something that is already elsewhere (at a ‘higher’ level) nor presuming upon what should appear at a ‘lower’ level (on the principle of subsidiarity).
- 4.32 These matters are to some extent addressed in ‘Unitary Development Plans Wales’ (2001) and in general terms in Planning Policy Wales 2002. However, there is no explicit Welsh equivalent of Making Plans issued by OPDM in 2002 which deals to some degree with the formulation of plans. A draft of the replacement document, Creating LDFs is currently at consultation, though this

- adds almost nothing to what is in the draft PPS12 and the associated consultation Guide to Procedures and Code of Practice document. For Wales, it is understood that some guidance will be developed for Local Development Plans, and the relationship between process and content ought to be made a significant feature of guidance to be prepared.
- 4.33 To these characteristics must be added the necessity that in separating what is desirable and acceptable from what is unacceptable, policies will perform predictably, fairly and consistently, and so win public confidence. Nothing would serve the objective of accommodating LID worse than a policy that in its aim to be flexible were so vague that it was open to the charge that the planning authority could use the policy to favour certain proposals and applicants on whim, whilst resisting others.
- 4.34 If there are no policies dealing specifically with LID in a plan, applications could be expected to be dealt with by general policies such as those dealing with development in the countryside, the location of residential development, or impact upon landscape. Policies supporting rural economic diversification and greater sustainability might also be present and be relevant.
- 4.35 So far (in England as well as Wales) most applications for proposals that might fall within the category of LID have been dealt with without specific policies in development plans, and it has also been the case that many of the development plan policies that have been drafted on the subject of LID read as though they have one particular case in mind.
- 4.36 The task for this study is to propose a policy context that will deal with proposals that may arise, essentially by determining whether or not they fall within a category that can be acceptable. That is, the policy context is to be created to define and manage acceptable types of development, rather than to make acceptable something that already exists.
- 4.37 Whilst this represents a proper approach in the use of a mature planning system, it is noticeable that in the few instances where planning authorities have sought to include policies ahead of any specific interest, this has begun to stimulate interest amongst people wondering whether this is a route to the achievement of something they would like to do, most usually involving the creation of a dwelling in the countryside. An example of this is the inclusion of a policy in the Milton Keynes local plan, stimulated apparently by the wish to make provision for such an unusual and interesting concept, rather than as a result of pressure from a particular proponent.
- 4.38 The planning authority did not receive any objections to the policy. One of the results of its inclusion has been that the authority has begun to be approached by people wishing to use the policy to justify a new housing in the open countryside. The policy has so far not been the subject of a planning appeal.

Control and precedent

- 4.39 Two very strong concerns influence the way that planning decisions are made, whether or not these are an explicit part of the policy context or could ever be.
- 4.40 The first is the concern that once it is given planning permission, something may evolve into something else that would not be acceptable (by the nature of its impact for instance), but that there would never be a point in the evolution when it were possible to identify where the change from acceptable to unacceptable had occurred (in a way that would stand up to legal scrutiny in an adversarial process). In rural areas and in locations where there is little natural scrutiny, the kinds of situations that development control officers and planning authorities are often familiar with are such as those where haulage businesses have emerged from the storage of farm vehicles.
- 4.41 The previous experience of a planning authority, including of local agitation and lengthy enforcement processes, may lead to caution, and hence to proposals being rejected on the grounds of what they could become rather than for what they are. Such concerns might be expected to be a strong feature of the consideration of something as unfamiliar and unproven as LID.
- 4.42 The second concern is that the grant of planning permission for a development should not set a precedent for other development. Every rural dwelling application is likely to be considered not only as a case of sporadic development, but as the thin end of a wedge, whereby with permission given for one dwelling there would be no consistent reason for resisting many more. Whatever else is included in the scheme, LID proposals will be controversial because there is a dwelling involved when the creation of a new dwelling would normally be a clear reason for refusal.
- 4.43 These two factors may promote a natural tendency to treat LID proposals with suspicion and caution, and mean that if a positive approach is sought to accommodating LID, it has to be clearly distinguishable from other unwanted development, and there has to be a means of retaining control over individual developments that are granted permission.
- 4.44 Whilst planning permission runs with the land, and is normally permanent, it is possible to grant planning permission that is personal to the user of land or a building for instance (though this approach is not generally favoured) and it is also possible to grant planning permission that runs for a limited period only. By these approaches, permissions can be given for development that would not otherwise be acceptable to take account of the particular circumstances of the individual (relating to disability for instance), or in a way that enables the planning authority to retain control, with renewal dependent on meeting certain requirements for instance.

Other tools

- 4.45 If a criterion policy is used as the basis of the determination of planning applications, it will be necessary at the time of determining the application to

- decide whether the criteria and the test related to the criteria are met. The particular nature of LID however, is that many of the criteria are likely to relate to how the development is operated and how the occupiers act, and this suggests a dynamic element to the process whereby the permission is only valid if the operation of the site is as specified.
- 4.46 This suggests that the planning authority could be involved in detailed monitoring of the development, with significant resource implications that might seem at odds with the singular nature of the development, as well as potentially with the level of freedom that the occupiers of the development might seek and expect. It is the case that LID is almost by definition an innovative form of development, with the implication of unproven approaches and of continuing change, and it is the case too that occupiers involved in making a modest living from a small area of land and supplementing this with educational activity perhaps, have to have some freedom to respond to opportunities.
- 4.47 The most likely way of dealing with operational and dynamic issues is for the applicants to offer the planning authority a management plan, and for this to be the basis of a legal agreement relating to the occupation of the site.

5 Using policies

Introduction

- 5.1 The planning policy context created for the consideration of LID has to work within the wider planning system. This section of the report discussion considers the way that development control decisions are made generally, and reflects upon the appropriateness of the normal approach in the context of the changes underway in the planning system and with the overarching objective for planning of delivering a contribution to more sustainable development.

Decision processes

- 5.2 The way that the decision process works in development control situations and other ways in which it might work are very pertinent to the consideration of LID.
- 5.3 Legislation provides as the decision process that planning applications are to be determined in accordance with the development plan, unless material considerations indicate otherwise. At the same time, harm to a matter of acknowledged interest remains the legal basis for the refusal of planning permission. In these circumstances, a refusal of planning permission is frequently presented in terms of the harm to one consideration making the development unacceptable, with a policy from the development plan that says that there should be no harm to that concern given as the basis for the decision.
- 5.4 This is essentially a negative approach, and one that has led to plans designed to provide a policy that carries the weight of statute to be available to refuse permission for development in as many situations as can be envisaged.

- 5.5 The number of policies this culture spawns is a matter that the reform of the planning system in the programme established by 'Planning: delivering for Wales' seeks to address, reflecting the particular concern frequently voiced by those seeking more dynamic and effective development plans that 'plans should not be development control rulebooks'. The 'Interim Guidance Note on the Implications for Development Plans in Wales of the Planning and Compulsory Purchase Bill', (Welsh Assembly Government, June 2003) says that:

'It is a fundamental aim of the Welsh Assembly Government's reforms to the development plans system that plans should be shorter, more locally focussed documents that are not over-burdened by excessively detailed development control policies. Local planning authorities can achieve comprehensive area-wide development plans without having an explicit policy for every eventuality.'

- 5.6 The aim should be for development plans to set out an integrated spatial strategy which identifies how desirable change will be achieved to the social, environmental and economic well-being of a place and its communities. Development control policies then become part of the means of delivering the desired outcomes, by managing the move from what is there to what is wanted.
- 5.7 The basic point about the form of decision process does not appear to being addressed however, with the Planning and Compulsory Purchase Bill reiterating section 54A of the planning and Compensation Act of 1990 in the form of section 37 and effectively thereby undermining the good aspiration of a move to spatial planning.
- 5.8 The promotion of more sustainable development requires a decision process where the wide range of matters that are encompassed by the sustainability agenda are all part of the process of reaching a decision. This needs to be a process of integration rather than one where a small number of matters determine the outcome and other matters are discounted. Making decisions through a development plan should enable a process to be followed whereby a proposal is evolved to the point that it contributes as well as it reasonably could according to all pertinent social, environmental and economic issues without harm to any of these concerns.
- 5.9 These kind of decision processes are frequently characterised as seeking 'win-win-win' outcomes (by allusion to the three categories of concern). Similar thinking (though possibly with a less demanding test) is encompassed by the 'net gain' approach to decision making, which provides for planning permission to be forthcoming in the event of either all of the decision criteria being met, there being no significant conflict with any of the criteria, or the criteria that were met outweighing those that were not. Similar thinking by the Countryside Agency in England has led to the idea of 'good enough to approve' as the basis for decision making.⁴
- 5.10 Under the form of decision process currently set out in legislation, the legal test for the grant of planning permission remains that of there being no demonstrable

⁴ Planning tomorrow's countryside The Countryside Agency 2000

harm to a matter of acknowledged importance. This position is regularly upheld by the courts. It is very relevant to the idea of LID where one interpretation of this would be that planning permission can be granted because the impact of the development is very low, and in relation to many specific parts of the sustainability agenda, there is a positive contribution. If low impact were interpreted as the absence of demonstrable harm, this could be said to entitle the applicant to planning permission. As noted however, a LID proposal may be said to cause demonstrable harm to the policy of resisting residential development outside of existing settlements.

The implications of having a policy on LID

- 5.11 The unusual nature of LID and the sense of having to make special provision within the planning system means that what is proposed as policy, and the way individual proposals are dealt with, will give rise to considerable comment. A particular purpose of the workshop held for this study was to identify some of concerns that would be likely to be raised from different quarters.
- 5.12 Matters that have been raised in discussion of the work can be categorised as dealing with precedent, control, fairness, and lifestyle, and these are commented on here.

Precedent

- 5.13 A policy basis for the consideration of LID is unlikely to get very far unless it deals with the likelihood that it will be seen by planning authorities and others as a form of 'exception' policy. That is, it is a particular device constructed to identify the particular circumstances under which something that could normally be expected to be resisted can be allowed. If the policy is to provide for exceptions, these have to be exceptional, and granting planning permission should not appear to provide for many other proposals to be able to claim that they too are entitled to a permission.
- 5.14 A harmful precedent will be avoided if what is LID and what is not are clearly distinguished, and this a requirement that must be met by the way that LID is dealt with. If LID is a 'good thing' then presumably a precedent for more of something similar to arise should also be seen as good, subject to the issue of capacity, and the extent an area can accommodate this type of development without negative environmental, economic or social impacts arising from the cumulative effects of the aggregation of the activity.

Control

- 5.15 This is probably the most difficult aspect of seeking to accommodate LID in the planning system, as introduced in section 4. Essentially the concern is with how to ensure that the proposal is what it sets out to be and that is accepted, and remains as such.

- 5.16 The possibilities raised include:
- that the scheme will not operate in the way intended, with impacts that are different and/or greater
 - that the benefits arising from the way that it is intended to operate will not be forthcoming to the degree envisaged
 - that the establishment of the principle will lead to other successors to the site acting in ways that are less consistent with what was envisaged
 - that it would lead to incremental change and growth.
- 5.17 There is the added concern that LID deals with unusual matters, and the reliance that can be placed on the normal compliance monitoring and enforcement procedures (which are difficult enough) may be more limited.
- 5.18 The wish for planning authorities to maintain control over and above what might normally exist if LID schemes go ahead is therefore common and understood.
- 5.19 Various possibilities are suggested, in the literature and by experience, and were discussed in the workshop. These include:
- the requirement that the development be readily 'reversible' through the use of demountable structures for instance
 - the grant of temporary permission
 - the grant of personal permission
 - the use of management plans, possibly secured by legal agreements.
- 5.20 All of these could be utilised and they are not mutually exclusive. The first is likely to be the case anyway in order to meet requirements of low impact and the use of materials with certain characteristics.
- 5.21 The most difficult of these possible means of retaining control is the grant of temporary permission. Permission should not be granted on a temporary basis with a view to only allowing the use for that period. The scheme should be either acceptable in which case a normal permission should be granted, or unacceptable in which case permission should not be granted.
- 5.22 The more usual reason for the suggestion of granting a temporary permission is to 'see how it turns out', providing for the opportunity after a probationary period to grant a further temporary permission or a permanent permission, or to withhold permission. However, the granting of a further temporary permission as a means of control is not appropriate. This clearly places the occupiers of the scheme under pressure to conform to the terms of the permission, but also leaves them with uncertainty. This is an unsatisfactory situation for individuals and families, but may also be a perverse approach in that it may inhibit the investment in and

development of the technologies and social linkages that the scheme requires to be successful under the terms of the LID concept.

- 5.23 Further details on mechanisms to control and enforce proposals through conditions, Section 106 Agreements and Management Plans are discussed later in the report at section 6.

Fairness

- 5.24 Questions about fairness have been raised during the investigation undertaken for this project, with concerns in essence that incomers with unusual lifestyles might be seen to be being favoured by the planning system when apparently deserving local people with needs for a dwelling in the countryside, or for support for their agricultural activities were not. This is not something that we find should be a great concern. The answer is that if there is a type of activity that the planning system should make provision for, it is open to anyone wishing to pursue this activity to make an application to be assessed against the planning provisions.
- 5.25 Human Rights issues are raised by the control of LID, though this is a matter that is outside the remit of the Brief and as such has not been considered in this work. However, it does provide an important aspect in the consideration of LID. Many of the appeal decisions pertinent to this subject have drawn upon the defence that it is an infringement of the appellants' rights under article 6 of the convention. The special circumstances of the applicant has always been able to be taken into account in making decisions. The Human Rights Act only provides a right to a home not a lifestyle, however, and it does require an inspector to balance the right to a home with the harm to the public interest or the aims of planning policies. If there is no harm to these then the interference with human rights is a serious consideration.

Lifestyle

- 5.26 The word 'lifestyle' is frequently used in debates about LID, sometimes positively to convey the point that LID is not a form of development in the conventional way that the planning system categorises land use (retailing for instance), but as an activity that involves the particular way that individuals live and relate to the land for instance. What distinguishes LID in most of the literature is the commitment of those involved. This has been borne out in discussion at the workshop, together with the acknowledged difficulty of constructing a process that at the same time has to be legally defensible and be able to separate those really committed to sustainable lifestyles from people who simply want a house in the country and who have or could nurture an interest in organic gardening perhaps.
- 5.27 There are also rather negative connotations to the reference to lifestyles, and matters of prejudice perhaps, when LID is linked to lifestyle choices that have uncomfortable associations for some people. Some local authorities and other organisations recall dealing with travellers, and in some quarters there may be a tendency to associate LID with a variety of forms of unconventional and even lawless behaviour. There is strong strand of 'tidying everything into its place' and

'conforming to a norm' in the way that the planning system has evolved and in the way that it is operated sometimes, and planning authorities are unlikely to relish the prospect of large numbers of concerned residents objecting strongly to a form of development that their policy context has gone to considerable lengths to provide for.

- 5.28 The planning system, as with all interventionist processes concerned with the public good, should accommodate diverse lifestyles and only be exercised where there is harm to the public interest. It is probably the case that lifestyles founded on a commitment to real sustainability will challenge the conventions of neatness and order, and of contextual deference, that have been established as basic planks of the planning system. It may well be good that they should. A system that always tends to the maintenance of things as they are is unlikely to deliver sustainability, and LID could provide valuable lessons in this respect.

6 Developing an approach to assessing and determining LID proposals

Introduction

- 6.1 Our overall finding from the exploration we have carried out is that if the Welsh Assembly Government and local planning authorities in Wales want to make provision for LID, appropriate policies should be included in development plans, but policies alone will not be sufficient for dealing with LID. Dealing with LID proposals needs to be seen as a process.
- 6.2 The process we suggest involves seeking answers to the following five questions:
- is sufficient known about the proposal?
 - could the proposal be dealt with by any other established part of planning policy?
 - could the proposal be made better in terms of the planning policy context by which it is to be considered?
 - does the proposal meet two basic tests of low impact and positive contribution?
 - is an appropriate management plan and legal agreement in place?
- 6.3 In order to meet the requirements of the planning system, applications will eventually have to be determined according to the planning framework in the development plan, and this policy needs to incorporate the ideas set out in this process.

Process

6.4 The five steps in the process are described in some detail as follows.

Step 1 Is sufficient known about the proposal?

6.5 The unusual nature of proposals means that it will be essential to understand in some detail what the prospective applicant intends, from the outset and for the foreseeable life of the scheme. Anybody interested in LID should be encouraged to engage in early discussions with the planning authority and others who have experience of these matters, and to set out as much information on what is proposed as possible.

6.6 This assessment by the prospective applicant and the planning authority will help in developing the scheme, in its determination, and in the design of an appropriate management plan and monitoring system.

Step 2 Could the proposal be dealt with by any other established part of planning policy?

6.7 We have already noted that there can be considerable overlap between what might be thought of as LID and various other matters already addressed in the planning system. There are links for instance between LID and:

- exceptions policies for affordable housing
- agricultural dwellings policies
- rural economic diversification.

6.8 In examining what is sought with the applicant, the planning authority may be able to suggest to the applicant that with some repackaging perhaps, the scheme could be dealt with as something for which there were well established policy and practice in the development plan. This would simplify matters. However, it is likely that many of the LID proposals do not fall readily into any pre-existing category, which is why they have been dealt with on an ad hoc basis so far.

Step 3 Could the proposal be made better?

6.9 The handling of LID will require that it be demonstrated that the proposal will have a low impact on environmental, social and economic assets and issues and a high contribution to the sustainability agenda. For both aspects the prospective applicant should be required to demonstrate that the proposal could not reasonably be made to perform better, and give good reason for this assessment. This process would be assisted by a checklist of what is looked for from LID proposals, based on the policy framework developed for the determination of applications.

- 6.10 A particular part of this examination and possible modification will relate to where the proposal is. There is some debate in the planning system as when alternative sites can be taken into account, but with LID effectively being dealt with as an exception to a rigorous policy objection to development in certain locations, there is a case for the applicant having to demonstrate why the proposal has to be where it is, rather than somewhere it might be more acceptable. This includes locating the LID to minimise its impact through visual intrusion.
- 6.11 Though an appropriate question, the likely reason for proposals being where they are will be access to the land, and this may have to be accepted as reasonable.

Step 4 Can the proposal be said to meet the tests set out in the planning policy?

- 6.12 Whatever else is said, the consideration of LID will require the specification of tests that can be incorporated into the development plan and that are sufficiently clear, precise and robust.
- 6.13 We propose that there be two basic tests, related to impact and contribution, and these and how they are to be applied together are discussed below.
- 6.14 We have deliberated over a third test related to the establishment of a significant difference between what is proposed and other schemes that might come forward. This could be described as a test of difference, reflecting a wish to reflect the particular nature of LID with a means for the planning system to distinguish genuine commitment and best endeavour from expediency and opportunism. The point has already been made that planning authorities may frequently feel that the decision will turn on the distinction between doing something desirable that involves living on the land, and seeking permission for a dwelling with associated desirable activity.
- 6.15 We have concluded that this matter is best dealt with by the form of the permission rather than in the statement of the tests applied by the policy.
- 6.16 In light of the judgement in the case of *Petter and Harris v SSETR and Chichester DC* (CoA 1999, EPL 5-163.25) it is not appropriate to apply a strict functional and financial viability test to some types of LID proposals and certainly when there is no intention of the proposals becoming permanent. However, it is necessary to establish that the land use activities proposed are able to support financially the occupants, even on a low income subsistence basis. It is also appropriate to establish a clear relationship between the use of the land and projects proposed and number of occupants to be sustained on the site in terms of the need for them to work the land or ensure the smooth running of the venture and the return that is gained. This type of information should be provided in the business and improvement plan and will feed into the integrated management plan and annual monitoring report.

Step 5 Is some form of management plan needed, and perhaps a legal agreement?

- 6.17 The fifth step in the process, if the first four steps have been followed and the view reached that the proposal could be acceptable, is concerned with the means that might be used to secure the nature of the scheme.
- 6.18 The use of management plans is strongly favoured from this study, for the following reasons:
- the preparation of management plan requires the prospective applicant to think about every aspect of the proposal, how it will work, and what their commitment is
 - a management plan will provide the planning authority with greater understanding of the proposal
 - a management plan provides a basis for determining the impacts are, and what the contribution is likely to be
 - the management plan in conjunction with a Section 106 Agreement provides a means of requiring the occupier of the LID to maintain the operation of the LID in the way that it was proposed and accepted
 - the planning authority will have a way of identifying departures from the agreed scheme, which can be used as a basis for seeking compliance, or perhaps agreeing changes to the operation of the LID with occupiers if these represent improvements identified in practice for instance.
- 6.19 The content of the management plan will depend upon the nature of the LID, but will be most concerned with specifying those aspects of the operation of the scheme that demonstrate sustainable development and the low impact (on the land and use of resources and energy for instance) and the contribution of the scheme (to the demonstration of good practice for instance). The content of the plan will itself need to be agreed with the planning authority, and it is likely that the grant of the planning permission will be subject to the agreement of and satisfactory conformity with, the management plan. This is likely to be best secured by a legal agreement, though it would be in the spirit of LID for this to be kept as simple as possible. The types of issues that could be covered in a management plan as well as the links with the Section 106 Agreement are discussed in section 7.

The policy tests and their use

- 6.20 The two principal tests that need to be examined further in developing planning policy and to enable the process described to be followed are related to:
- impact
 - contribution.

- 6.21 The test for LID to be acceptable – if the proposal has not been otherwise and better considered by any other policy area as discussed at step 3 – is a deliberately demanding one. This is that a proposal should:
- have a very low impact in terms of the environment and the use of resources, and
 - it should make a positive contribution to the public good in terms of environmental, economic and social capital, and
 - the contribution should be demonstrably greater than the impact.
- 6.22 This overall test to be met is considered further with the suggestion of the form of development plan policy, and the way that a permission might be granted, following discussion of the way that impacts and contributions can be assessed.

Interpreting impact and contribution

- 6.23 Though we place these matters of impact and contribution at the heart of determining whether proposals should be accepted, they are matters that even in dealing with 'conventional' development proposals are unavoidably subjective to some degree, and this difficulty is increased by the nature of LID.
- 6.24 There is generally more experience of considering impacts in planning determinations, particularly in terms of impact on environmental issues and resource use, and they may be more scope for impacts to be quantified in some cases. The assessment of impacts can be achieved through the use of landscape character assessments and checklists to identify resource use of the buildings and proposals.
- 6.25 The aim is to achieve the lowest possible impact for each part of the sustainability agenda. Whilst potentially very difficult to specify and assess, the guiding principle should be that the activity represents – in all respects – a significantly lower impact than arises from the 'average' lifestyle. This should be particularly so in respect of energy and water use for instance.
- 6.26 The contribution test seeks to establish that there is positive contribution from the LID in terms of the environment, the use of resources, and social/economic benefits. This should be assessed using information submitted by the applicant about the intentions of the scheme in the form of the management and business plans. The requirement will be to achieve a positive contribution in terms of the environment and a combination of social and economic capital.
- 6.27 Resource use – the fourth strand of sustainable development – is more difficult as merely existing inevitably means some consumption of finite resources, and the concern is the minimisation of this consumption, something addressed under impact.

- 6.28 There is a further and demanding aspect of the contribution test, and this is that it will also be necessary to show that this contribution is a public benefit. This means that there should be a positive benefit to the community (however defined, though probably local) from the activity associated with the LID. That is, the benefit must extend further than merely meeting the needs of the applicant and their family. This is a demand placed on a potential LID that is not placed on other forms of development, at least by the planning system, but is part of the earned exception. A debateable area may be whether the reduction of demand on public services in itself constitutes a contribution. We would suggest that this should not be sufficient to discharge the contribution test, though the courts may come to deliberate on this.
- 6.29 We have noted earlier in this report that the current most-used definition of LID as *'development that through its low negative impact, either enhances or does not significantly diminish environmental quality'*, may not be sufficient or adequate to distinguish acceptable from unacceptable schemes for the purposes of the planning system. This report finds that to be acceptable, there should be a specific requirement for something positive in combination with the absence of anything negative in the types of development considered. More accurately the form of development described in this report could be entitled 'low impact and positive contribution development', or the essential characteristic of the relationship with the land could be captured in a categorisation of the form of development as 'empathetic', 'synergistic' or 'symbiotic' development, though we do not suggest any of these terms be adopted for general use in development plans. Nor do we recommend that the term 'sustainable development' be used, in part because of the difficulty with the many ways that the term is already used in most development plans, but also because of the point we have made about the relationship between any consideration of LID and the types of decision process that the planning system uses.

Impact

- 6.30 For LID to be acceptable, the impact it has to be very low indeed, such that the development is effectively without 'harm to a matter of acknowledged interest' in all respects except that of creating a dwelling where policy would normally preclude this form of development.
- 6.31 If the countryside is to be protected 'for its own sake' it follows that any form of development allowed within the countryside should have a minimum impact on the landscape, that means preferably neutral and certainly the lowest possible imprint. This is enshrined in national and local planning policy and is at the heart of the strict controls that are placed on development in rural areas. However, the very credentials of LIDs imply that their performance in this regard (together with other environmental criteria) should be particularly stringent to warrant 'exceptions' to the normal restraints on new development in the countryside to be made. It will be necessary to incorporate this into the proposals at the early stages of negotiation as well as controlling it through its inclusion in the management plan and section 106 Agreement.

6.32 It is not possible to generalise and define what will constitute an acceptable or unacceptable LID in terms of landscape impact as, with all development, it depends on the nature of the proposals, the site and its context. However, at the very least, LIDs that come forward should provide a clear landscape and visual analysis that demonstrates that they would have no negative impact on the character of the landscape and its visual appreciation and perception from public viewpoints. Such analysis should be undertaken in accordance with current guidelines on landscape and visual impact assessment, 'Guidelines for Landscape and Visual Impact Assessment; Second Edition' (2002) and submitted as an integral part of planning applications. Initial assessment can identify potential problems and solutions at an early stage in the evolution of a project, allowing the proposals to be adjusted to ensure that optimum solutions and landscape objectives are achieved.

6.33 The following matters are all relevant to the assessment of landscape impact.

Siting

6.34 Siting is the most fundamental aspect that affects the potential impact of development on its surroundings. It is recognised that many LIDs come forward where land becomes available rather than by a process of location selection. As such there may be few, if any, alternative site locations available to prospective LID promoters. Though a site may be in a less than ideal location within the landscape this would tend to be less of an issue compared to more conventional and larger scale development, that requires greater servicing.

6.35 Nevertheless, sites that are fundamentally wrong (for example, highly exposed, in open elevated positions or on prominent ridges) should be avoided - in any case such sites are likely to be inconsistent with other objectives of LID (energy conservation, for example). Locations that are discreet within the landscape are always to be preferred for development and LID is no exception to this principle. However, the small scale nature of many LIDs lend themselves well to taking advantage of specific site characteristics (such as a local fold in the landform or small area of vegetation cover) and it may be the case that 'low impact' locations that are acceptable may be found within sites that would not be able to successfully accommodate other forms of development. That said, hidden sites are obviously not necessarily a good reason for choosing the location or allowing the proposal. An iterative process of visual appraisal and site planning may achieve successful solutions.

6.36 Wooded sites are preferred for some LID on the basis that the woodland provides a source of natural, locally available, cheap building materials and may also form the basis of the occupants livelihood (though use of timber products for local crafts, and the harvesting of woodland products for example). Such sites offer greater potential for accommodating and absorbing LIDs without adverse visual impact, due to the enclosure that may be provided. Furthermore, the small-scale nature of structures means that they may be capable of being accommodated, with imperceptible landscape impact, within existing clearings or with little disturbance to existing vegetation.

- 6.37 Where sites already contain existing buildings, preference should normally be given to their re-use before new structures are contemplated, although if the planning authority were only prepared to grant temporary permission, their adaptation should lead to minimal change to allow them to remain largely unaltered should the consent not be renewed or permanent consent granted subsequently. However, in some cases there may be substantial visual benefits arising from the removal of unattractive, perhaps modern structures, that detract from the locality and the location of any new structures in alternative, and more appropriate positions with the site. The removal of such structures could be made a condition of any consent.
- 6.38 Wales contains three National Parks and discussion has taken place on whether LID should not be permitted within these designated areas. Whilst the emphasis is on the protection of the countryside for 'its own sake', as opposed to a hierarchical approach to protection, it is recognised that the landscapes of National Parks and Areas of Outstanding Natural Beauty (AONB) are outstanding assets and they rightly receive the highest levels of protection. Whilst an argument can be made that, because well conceived LIDs may have little or no environmental impact (and thus would not conflict with the primary purpose of designation), they should be allowed equally inside as well as outside National Parks, this would be a position that raises some difficulty.
- 6.39 An alternative approach would be to only accept LID proposals in the National Parks when it can be proven that the LID will specifically contribute to the '*conservation and enhancement of their natural beauty, wildlife and cultural heritage, and promote public understanding and enjoyment of their special qualities*'. This approach incorporates the need to demonstrate a positive effect on the landscape. This approach would ensure that, whilst not ruling out LID within National Parks, such development would be the subject to a stricter application of the contribution test. Given the Government's statement that 'AONB's should share the highest status of protection in relation to landscape and scenic beauty' it will be necessary to adopt the same approach in these areas. This would be that LID would have to prove that it would be consistent with National Park and AONB purposes, which would have to consider the specific objectives in these areas and the stricter requirement for benefits to landscape, biodiversity and cultural heritage. If it passed this test, the proposed LID would still have to meet the general low impact test. It is envisaged that this would be a harder test to meet in these contexts.

Materials

- 6.40 The very nature of many LID buildings and structures, being constructed of locally sourced, natural materials, together with their modest scale, tends to imply that they are unobtrusive and are 'at one' with the landscape and are therefore likely to be acceptable in sensitive locations where other more conventional forms of development would not be. It is an inherent aim of those that seek to develop genuine LIDs, to 'tread lightly on the land' and the management plan should confirm the need for the use of locally sourced natural materials and a sensitivity to siting structures. Depending on the nature and extent of individual

land holdings, scope may exist to adjust the locations of proposed structures to ensure 'best fit' within the site and local landscape context.

- 6.41 Careful consideration also needs to be given to the use of some recycled materials; the desire to use such materials can have visual consequences giving an inharmonious appearance (for example painted timber, glass, tyres, plastic sheeting) which will, potentially, increase the visual impact of the structure(s).
- 6.42 The inclusion of innovative and appropriate technologies into forms of housing and other development that are intended to make these more sustainable will not necessarily ensure that the development meets the test for LID, as there be significant visual impact. Some of the implications of these types of proposals may include larger areas of glazing and solar collectors. Other physical features will be plant and equipment associated with the generation of renewable energy such as photovoltaic arrays and wind turbines. These will be visible in the local landscape, as they demand access to climatic elements. Additionally, and perhaps more critically, materials specification and selection will be governed by the quest for non-toxic, materials with low embodied energy or recycled or recyclable. Locally sourced materials and components should feature strongly but these will be based on measures of sustainability and not only on matching colours and textures of new and old.

Associated activity

- 6.43 As with any other development, consideration must also be given to the other activities that form part of the development. In some cases this can be one of the most important elements of the proposal. Materials storage and accumulation, vehicle parking, and ancillary structures such as polytunnels, can, if poorly located, create additional impact that would render the cumulative impact of the development unacceptable.
- 6.44 Similarly, the impact of land use changes (conversion of grassland to vegetable production for example) also need to be considered. This is something that may be affected by the Environmental Impact Assessment (EIA) Regulations. Small vegetable production plots within an otherwise pastoral landscape has the potential to create 'domestication' and a change in the character of a site and hence, its affinity with the surrounding landscape. Sites should be evaluated to ensure that a LID that develops successfully and may require an extension of cultivated land as well as other structures (such as polytunnels), can do so sympathetically without the cumulative impact of such development and change becoming unacceptable. Planning agreements can be used to assist in avoiding a shift in the impact on the landscape from positive or neutral to negative.

Lighting

- 6.45 As LID may be located in 'open' countryside, away from other forms of development, the impact of lighting needs to be taken into account when assessing the potential landscape and visual of LID proposals, and the introduction of lighting that will be visible in otherwise unlit areas of countryside should be avoided.

Transport and infrastructure

- 6.46 The impact of development in a rural location in terms of the relationship with increased vehicular uses is an established part of the planning and sustainability agenda. An assessment of the traffic generated from the primary use of the site and by its residents will have to be made. For example, the impact in terms of transport may be reduced if the workers reside on site, but may be dramatically increased if there are many public access and educational opportunities.
- 6.47 The effect on the existing infrastructure and any proposed changes to the local systems are also important aspects of new development in remote rural locations. The impact on water and power supplies as well as the implications for drainage and other resource use should be minimised to achieve self sufficiency and autonomy with little impact on the mains systems. In practice this will be a situation where the impact is as far below average as possible.
- 6.48 There are inherent conflicts, as there will be wherever more sustainable development is sought. However, the consequences of ensuring low impact and the minimisation of traffic with for example the avoidance of overwidening access, could result in difficult emergency vehicle access. There may be public health issues to be resolved with respect to any proposals that included educational visits as an allied use.

Contribution

- 6.49 To meet the second principal test for LID to be acceptable, there needs to be a contribution that is different from and more than the absence of impact in the way described above, and which represents a positive gain from the development that takes place.
- 6.50 The assessment of this contribution should be demanding, with the proposed LID required to demonstrate that there are positive contributions from the development:
- to the components of sustainable development, with environmental, resource use and social and economic benefits, though possibly with some combination
 - that include wider benefits that are in the public interest, rather than simply benefits to the occupiers of the LID.

Environmental benefits

- 6.51 An overall positive effect on the environment should be a valid and achievable aspiration for a LID. An essential component of a LID is that it will involve land based activities and that such activities should be capable of bringing about direct and indirect land management and biodiversity benefits. These should allow the overall effects of the development and associated activities to deliver a positive impact on the landscape overall and one which achieves a public benefit (for example, by bringing back neglected woodland into productive use through

traditional woodland management activities such as coppicing and replanting). These will be evident in the site and environmental management plans that should be prepared as part of the process of determining a planning application for LID.

Resource use

- 6.52 In practice the requirement to show a positive contribution in this aspect of the sustainability agenda is near impossible, unless there were a contribution into the grid from renewable energy generation for instance, though it is doubtful that such a scale of development would be otherwise acceptable. The most that can be achieved is likely to be autonomy in resource use with no or very little use of mains resources such as water, power and sewerage systems. Matters that should be assessed for their contribution to minimising resource use and their contribution, in the widest sense, towards providing a public benefit include the consumption of fossil fuels and other non renewable resources, the use of water, and community composting and recycling opportunities.

Social and economic benefits

- 6.53 In the consideration of parts of the sustainability agenda, and in practical processes such as sustainability appraisals, social and economic benefits are often difficult to entirely separate, with some aspects of social well-being more readily achieved with reasonable economic well-being for instance.
- 6.54 It is difficult to define what the wider social and economic benefits are without judging personal lifestyle choices and putting some form of value on these. However, as objective an assessment as possible of these types of benefits should be undertaken to consider what the proposal will provide both on site and as a wider public benefit.
- 6.55 The types of social and economic benefit that could be provided from a LID might include:
- the provision of services to the community, including making natural and locally produced food available, the repair of tools and the recycling of materials, and the provision of educational, social and work opportunities
 - addition to the local economy, by putting into the community income obtained from the wider sale of produce and products from the site
 - positive health recreational development through public access, footpaths, visitor centre and picnic and play area
 - the practical demonstration of more sustainable technologies and lifestyles.

7 Making a decision about LID

Introduction

- 7.1 This section brings together how it is proposed that proposals for LID are dealt with once a planning application is made. The section deals with the appropriate policy framework, the nature of the permission that might be given, and what might be in a management plan.

A policy framework

- 7.2 Development plans should address the issue of LID explicitly under the present arrangements, though we are interested in the way that the policy content of development plans will change in the future, and whether with fewer and more comprehensive development control policies as part of a more spatially developed plan, the approach to LID would be different. The way that LID is dealt with in the meantime may itself become indicative of the changes needed.

National policy

- 7.3 In order to provide effectively for LID in the planning system, it has to be recognised in national policy by inclusion in Planning Policy Wales as well as through the relevant Technical Advice Note, TAN6 Agriculture and Rural Development.
- 7.4 The Spatial Strategy for Wales, 'People, Places, Futures - The Wales Spatial Plan', was published in draft on 30 September 2003. This establishes an integrated framework for social, economic and environmental development and though valuing the environment is a specific objective and many aspects of the approach may be translated into policy options it is not suggested that a future version should contain specific reference to LID.
- 7.5 At the national level, the reason for including reference in TAN6 would be:
- to establish the acceptability in principle of LID
 - to promote the use of an inquisitive, but supportive process in assessing proposals that claim to seek a real contribution to more sustainable development
 - to introduce the desirability of local development plans containing an appropriate policy framework to allow the consideration of proposals for LID
 - to identify the essential characteristics that policies should address in making provision for the consideration of LID.
- 7.6 A statement in TAN6 along these lines, providing for policies in LDPs to establish a means of considering LID, will be sufficient.

7.7 A suitable policy framework is needed at the local level, though we are wary of the use of model policies because of the previous poor experiences with these, and because of the essential requirement for development plans to emerge from an inclusive, participative and deliberative process rooted in the community and reflective of the place. For the purposes of illustration however, a policy included in a local development plan to enable LID to be considered with some precision and consistency, might be as follows.

*Planning permission may be granted for development in the open countryside, where the proposal meets **all** the following criteria:*

- *the proposal requires a rural location, is tied directly to the land on which it is located, and involves agricultural, forestry, horticultural or other land based activities*
- *all activities and structures on the site will have minimal impact on the impact and on the use of resources, assessed against:*
 - *impact on landscape character, including siting, materials, associated activities and lighting*
 - *the ability of the scheme to provide for its own resource needs in terms of energy and water use, drainage, sewage, and waste disposal*
 - *the minimisation and management of vehicular transport*
- *the proposal makes a positive environmental contribution, and achieves a positive social and/or economic contribution, with public benefit, assessed against:*
 - *enhancement of the biodiversity, habitats and landscape of the site*
 - *conservation and management of the land*
 - *promotion of sustainable forms of design, production, development and operation*
 - *use of composting and recycling*
 - *opportunities for community involvement*
 - *contribution to educational and training needs*
 - *addition to the local economy*
 - *provision of social welfare*
 - *provision of recreational opportunities*
- *the proposal will provide sufficient livelihood for and substantially meet the needs of residents on the site*
- *the number of adult residents should be directly related to the functional requirements of the enterprise*
- *in the event of the development involving members of more than one family, the proposal will be managed and controlled by a trust, cooperative or other similar mechanism in which the occupiers have an interest*

Any development and associated activities will:

- *be of a scale appropriate to the site and enterprise proposed*
- *be visually unobtrusive within the landscape and, where located in National Parks or AONB's, will not detract from the special qualities of the designated area*
- *where a site contains existing buildings the applicant will need to demonstrate why the existing buildings cannot be used if new structures are proposed, and preference will normally be given to adaptation and re-use rather than the erection of new buildings/structures*
- *use materials which are natural, renewable, recycled and where possible locally sourced*
- *accord with sustainable construction and design principles*
- *incorporate comprehensive measures to minimise energy use and waste production*
- *should be capable of easily being dismantled and removed from the site and the site restored to an appropriate state in accordance with the terms set out in the management plan*

Any proposal will have to submit an integrated site management plan, biodiversity and landscape character assessment together with a business and improvement plan and sustainability action plan for the site. These will detail the activities, structures and environmental management as well as sustainability objectives to be achieved and provide evidence of the functional needs of the enterprise and financial information as to the likely returns to be achieved.

The applicants will be expected to enter into a S106 agreement relating to the continued operation of the site, and based upon the site management plan.

- 7.8 It may be appropriate for the examples of impacts and contributions under the second and third bullet points to be in the text in the development plan rather than the policy, or in supplementary planning guidance, though our preference is to maintain this material as part of the policy.
- 7.9 Though the report uses the term throughout in accordance with the Brief, we do not suggest that the term Low Impact Development is used in the policy (and another term would be better if the policy is to have a title in the plan). This is because the form of test set out for the acceptability of the particular type of development addressed seeks more than low impact.

Guidance on the interpretation of the policy

- 7.10 If LID is to contribute positively to the sustainability agenda, it is essential that the tests and expectations are clearly stated and built into any policy and a

framework set out for their assessment. Reasoned justification and supplementary planning guidance on a number of detailed issues will need to be produced to assist applicants embarking on LID enterprises. An example would be the positive contribution sought in terms of sustainable construction and design together with the minimisation of resource use on the site.

- 7.11 It is proposed that LID proposals be required to go further than what is the average for house building, that is, beyond building regulation standards on energy performance and seek to make a contribution to sustainability. One approach would be to establish a checklist / scoring system that would allow objective assessment of all proposals against a consistent and well established set of criteria. An example of this is the Building Research Establishments Environmental Assessment Method (BREEAM). This is an environmental assessment method that has been used since 1990 to assess a buildings performance against a number of criteria. These include management, energy use, health and well-being, air and water pollution, waste, transport, land use, ecological value conservation and enhancement of the site, environmental implication of building materials, including life-cycle impacts, consumption and water efficiency. Consideration of the environmental weightings of each of these enables a single score to be attributed to the building. However, this approach is highly complex and requires a considerable level of knowledge and as such is probably inappropriate for adoption within this policy framework and in relation to LID.
- 7.12 This work has been taken further by a recent study on 'Sustainable Housing in Protected Areas' in the Brecon Beacons. It was carried out by the Design Research Unit of the Welsh School of Architecture and was commissioned by the Brecon Beacons National Park Authority (BBNPA), the Countryside Council for Wales (CCW), and the Campaign for the Protection of Rural Wales (CPRW). It considers in detail what may constitute sustainable housing and has devised a straight forward checklist of criteria of sustainability issues for use in the Brecon Beacons National Park collected from a range of sources, together with methods to address them:
- water
 - waste
 - energy consumption
 - materials
 - biodiversity
 - nature conservation
 - access to services and facilities
 - flexibility
 - communications
 - light
 - user participation
 - health
 - integration of transport
 - access to transport
 - green transport
 - affordable housing.

- 7.13 There are considerable benefits from this type of approach include explicit demonstration of compliance and environmental improvement. This would enable with a comprehensive and consistent assessment of the contribution to sustainability made by proposals. The above criteria identified in the 'Sustainable Housing in Protected Areas' report may offer a starting point for the assessment of LID proposals. However, it is outside the terms of this report on LID, and would require further consideration of the types of sustainability issues to be included in any assessment given the nature of these types of projects. Work would be required to develop a checklist approach in conjunction with and complimentary to the policy.
- 7.14 An important part of the assessment of the proposal against the tests will be the submission of a landscape character assessment together with a landscape and biodiversity plan as well as sustainability statement. A business and investment plan will provide evidence of the financial returns and functional requirements, and a sustainability statement will show the relationship with the four themes of sustainability. These will be fed into the management plan which will deal with all the planning and non-planning issues related to the proposal and be a means of control linked to a condition and Section 106 Agreement.

Management plan

- 7.15 A management plan allied to a Section 106 Agreement is an essential instrument of control. It would also be a useful vehicle for dialogue with the Local Authority at an early stage in the process. It would assist in understanding the intentions of the applicant and aid debate about the merits of the proposals as well as offering a mechanism for seeking improvements. More specifically it can be included as a condition on the permission that an annual management plan will be submitted and the proposal assessed against this. It is likely that both a landscape and biodiversity management plan and a business and improvement plan will be required. It may also be appropriate for a sustainability action plan to be submitted detailing the explicit sustainability objectives and achievements for the site and proposal as a whole as well as the contribution the buildings will make towards achieving sustainable design.
- 7.16 The types of issues that will need to be included in the submitted management plans include:
- the objectives of the proposal
 - project plan and timetable for development of the site
 - the activities to be undertaken on the site and the names, ages, residence and likely activities to be undertaken by all occupiers of the site
 - clarification of the expected income from the activities

- the extent of and location within the site of specific uses and structures, such as vegetable patches, polytunnels, animal shelters, residential accommodation, vehicular hard standing
- the retention of the existing landscape and new planting
- the expected vehicle movements on a weekly basis and mechanisms for the control and minimisation of this
- proposals for any public access and educational activities
- timescale for review of the management plan.

Legal agreements

7.17 An essential part of controlling any LID proposals will be achieved through a legal agreement. In every case the tests of necessity and reasonableness of a planning obligation will have to be passed, and these include:

- is the requirement in the agreement so directly related to the regulation of the proposed development that it should not be permitted without it?
- will the agreement offset the loss of, or impact on, any amenity or resource which is present on the site prior to the development?

7.18 It will be necessary to tie the management plan directly into a condition or a Section 106 Agreement. This will provide control over all the activities agreed in the permission through the management plan. One problem with legal agreements may be that the signatories have to have an interest in the land. Unless the land is owned by the proponents of the LID proposal, this control through a S106 agreement will be a difficult to achieve. However, many of the people pursuing some kind of LID are individuals or families who are direct owners and have acquired a plot of land through inheritance or some other windfall, with any lease arrangements of a non commercial nature. In these cases, where an interest in the land can be clearly demonstrated and any other parties with an interest are also happy to sign the agreement, this means of control is highly effective in providing a means of ensuring that the applicant undertakes the proposal in the way it is intended and provides a procedure for enforcing any breach.

7.19 Information from This Land is Ours indicates that a greater proportion of people practicing and/or interested in LID are probably families / individuals (66 to 75%), and only a minority prefer to be associated with some kind of 'intentional community'. In the case of the minority, a trust or other social body is not normally a burden for group applications, because groups usually set up a legal structure of this kind anyway for their own benefit. The mechanism of a 'housing association or other social body (for example, a trust) is advocated by the Government to secure affordable housing 'over subsequent changes of ownership and occupation', and the same role can be played in respect of LID.

7.20 Legal Agreements are a useful tool in controlling and monitoring the development, However, they are perhaps most useful when money is required up front, possibly in the form of a bond to offset any harm that the proposal will cause, and possibly to provide funds to secure the restoration of the site at the end of the life of the permission. While this is sound in theory, the practical application of this to LID proposals, which may be experimental and at subsistence levels, is likely to be problematic with difficulty in securing a bond of an appropriate amount.

Planning conditions

7.21 Conditions are generally the most appropriate way to achieve control over a development if the only parties involved are the planning authority and the applicant as occupier, and if there is no transfer of money involved. Where they can be used, conditions are generally simpler than and preferable to Section 106 Agreements. However, in many cases the use of both will be the most effective form of control. One benefit of conditions is that they allow the planning authority to monitor their compliance easily and according to a clear framework for enforcement. The use of advice notes on a planning permission to explain the terms used in conditions and to clarify exactly what is meant may be useful. Carefully worded conditions will be necessary in all cases for LID and the matters dealt with may include:

- temporary for certain length of time
- personal permission
- restriction on use in accordance with objectives
- restriction on number of dwellings, their size and location
- restrictions on permitted development in terms of location of caravans for instance
- landscape
- restriction on access, vehicular movements and storage
- requirement for an annual management plan to be submitted and agreed and implemented
- removal of structures and use discontinued within x days if any necessary requirements not met.

Personal permissions

7.22 Granting a personal permission may provide a successful means of control of LID in that they ensure the owner/occupier/developer is accountable for their actions and directly responsible for the proposal. Planning policy seeks to control the use of the land and it generally discourages the restriction of occupancy. However

- given the nature of LID proposals and their relationship with both the land and lifestyle intentions of the applicant, it could be successfully argued that special planning grounds would exist to justify their use. In addition, a personal or occupancy condition may be appropriate where a dwelling is being allowed on a site where permission would not normally be granted, as a means of avoiding establishing the principle of residential use of the land.
- 7.23 It may however, be difficult to grant a 'personal' permission to a group of people in the form of a trust. This is discouraged by policy because of the difficulty in controlling the persons involved in the trust. However, the granting of permission to a trust or cooperative that has specified aims and objectives and is governed by strict adherence to these in relation to the activities on the site should be possible by the use of a planning obligation and/ or condition requiring a management plan. The existence of a trust, charity or co-operative set up in perpetuity with dedicated and legally defined aims and objectives, would give a further level of reassurance.
- 7.24 The benefits of the involvement of a trust or cooperative would include a coherence of aims and objectives broader than those relating purely to the site, incorporation of public benefit and net gain into proposals and a legitimacy of intentions. There are many different ways of setting up trusts, with charities, housing associations, development trusts, co-operatives, industrial and providential societies for instance, all of which could carry out this function. There may also be the additional advantage of the easier explanation of intentions, together with self policing and accountability as well as understanding by the rest of the local community.

8 Conclusions on proposed approach

- 8.1 The question posed for this study by the Brief was whether planning policy could be devised that would enable LID to be properly considered in the planning system. It has not been part of the project to determine whether provision should be made in the planning system for LID. That said, the planning system should be dynamic in a changing environment, and positive in promoting innovation and in seeking a contribution to sustainable development. The subject of LID merits consideration by the planning system, because for something to be LID it must represent a positive effort by people to live in more sustainable ways.
- 8.2 Whilst living more sustainably is laudable, we have noted that this is necessary but not sufficient for the grant of planning permission for LID. A proposal for LID may display many virtues, but in terms of the operation of conventional planning policy is inherently problematic if it involves the creation of a dwelling in a location where residential development is unwanted – the open countryside primarily.
- 8.3 In the language that we would rightly expect from naturally reticent planning authorities and many others, and when it comes to a decision, incorporating sound energy conservation measures into a dwelling, or keeping a few goats for instance, should not justify building a house where one would otherwise be strongly resisted. The task therefore in response to the Brief has been to

- determine whether a sufficiently precise, consistent and robust approach can be set out for distinguishing as acceptable a form of LID from what would be generally unacceptable, and to do so in a way that would maintain public confidence.
- 8.4 Our conclusions on developing a policy framework for the consideration of LID are that:
- an approach can be devised that enables LID to be accepted where tests are met
 - a clear process should be followed from the first awareness of a LID proposal arising to the determination of an application, and in the event of permission being granted, through the monitoring of the scheme in operation
 - the determination of a planning application should be on the basis of rigorous and specific tests, with permission only being granted where the tests are all met.
- 8.5 The test for LID to be acceptable – if the proposal has not been otherwise and better considered by any other policy area – is a deliberately demanding one. This is that a proposal should:
- have a very low impact in terms of the environment and the use of resources, and
 - it should make a positive contribution to the public good in terms of environmental, economic and social capital, and
 - the contribution should be demonstrably greater than the impact.
- 8.6 The basis of a policy is suggested, to be used as part of the process set out in the report and as the basis for the determination of an application, and this has a national and local dimension.
- 8.7 The use of personal permissions is suggested to be a device for meeting many of the concerns that LID might raise, as a means of retaining control and avoiding precedent for instance. The use of management plans, most probably secured by the use of legal agreements, is also seen as a vital part of the means of promoting but controlling LID.

Finally

- 8.8 The report has noted the subject of LID to be fascinating and vital, notwithstanding the apparently small number of likely proposals compared with the general flow of development. This is because of the connection with many of the most interesting and challenging questions facing the makers and managers of the planning system today. The issues discussed in this report have far wider implications for the planning system than a requirement to deal with a particular type of development.

- 8.9 The Brief was to propose policies for the consideration of proposals for LID, and this has been done, though the reader will note an underlying sense of unease throughout the report. This relates to the current expectation that future development plans will contain less rather than more policies, but moreover to the relationship between the decision process and the aim of planning to contribute to more sustainable development.
- 8.10 The planning system and development plans in the future could seek to promote more sustainable development by establishing a positive contribution to the achievement of sustainable development as the test for the grant of planning permission, and setting out policies that identify how a contribution to the achievement of sustainable development would be identified. The way that this report suggests that LID be dealt with is rather like this, but applies only to LID. This might be seen as somewhat confusing or it might be a step towards the approach described.