

Weighing up the ODDs
Options, Development and Diversification

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Options, Development and Diversification

The growing trend of development and diversification in the British countryside stems from three main causes: the decline in farm incomes, the growing influx of non-agricultural commerce into rural areas and a change in planning policies.

Even before the foot and mouth disaster, farm incomes have been in decline over the last five years, falling by as much as 90% overall in that period according to the figures issued by the Ministry of Agriculture, Fisheries and Food (MAFF). Farmers have responded to this situation in many ways, but notably through diversification. Already in 1999 a survey by the National Farmers' Union established that almost two-thirds of farmers in Britain had other forms of incomes. This included cases where one or more members of a household were engaged in work away from the farm and so did not imply that the majority of farms in Britain had actually developed alternative enterprises on their premises. Nonetheless, it indicates a significant dependence on non-agricultural incomes, much of which would have been generated on the farm itself.

There are two particular factors that will have led farmers to develop their own alternatives rather than seek work outside; firstly, that it is not easy to find suitable employment when living in relatively remote and non-commercial locations and, secondly, that the farm and its buildings offer an available resource for redevelopment. Even if, for example, factory jobs were available in the area, it can be difficult for a farmer not only to adapt to such an environment but also to fit in the work that still remains to be done at home. Added to this is the likelihood that the factory will be some distance from the farm, involving time and expense in travelling to and from what is then probably not a particularly well paid job.

The opportunity to convert some of the farm land and buildings to alternative uses may seem a more attractive option as farmers are resourceful by nature and used to doing practical work on their properties which is after all, literally, familiar ground. Being able to do the work is not however enough as so much depends also on finding the right markets and on fulfilling innumerable formalities, especially as regards planning and other regulations.

The influx of commercial businesses into the country has often given new life to old barns as an increasing number of organisations have found an advantage in escaping the high overheads of urban locations and enjoying a more agreeable working environment. Even among those who continue to work in towns, many are tending to opt for living in the country, bringing additional pressures on local planning and generally boosting the rural economy.

National planning policy has meanwhile been rather ambivalent. The Government's intention to protect rural areas from development by giving priority to 'brownfield' sites has met with limitations and the emphasis has switched back again to 'greenfield' locations. This has in turn met with inevitable opposition, while the continuing rise in house prices would indicate a shortage of housing stock and an ongoing need for new development. The most recent Government statement on this overall position was published in the Rural White Paper in November 2000.

This long awaited policy statement deals extensively with the fabric of rural society in the form of services and facilities, but touches also on diversification and development notably through three new measures.

It seeks to introduce ways of *supplementing* agricultural incomes, as opposed to *supporting* them as has been the case under the Common Agricultural Policy. It offers also *guidance* to Local Planning Authorities (LPAs), but does not suggest new legislation or statutory regulations, and it offers financial assistance to farmers embarking on non-agricultural ventures. It also confirms an earlier policy statement that seems of little consequence in itself but which serves to illustrate a general change in position over the future use of farmland.

This last feature concerns what is described as 'best and most versatile land' or that which is classified on the Ministry maps as being of Grade 1,2 or 3a. Up until now, any planning application made on land of this quality had to be referred by the LPA to MAFF. The implication was that this type of land was considered to be of such importance to the nation's food production capabilities that it could not be taken out of agricultural use without the approval of the Ministry. The lifting of this regulation underlines the switch in emphasis to new non-farming uses of land throughout the country, even where it may involve the loss of some of the best arable soils.

On a more general planning note, the Rural White Paper outlines the guidance that the Department of the Environment, Transport and the Regions (DETR) will give to the LPAs regarding new development in rural areas. The main emphasis is on employment and transport. As a counter measure to the overall fall in rural prosperity and the decline in agriculture, the Government is keen for new employment opportunities to be created in the countryside. In consequence, planning proposals that might bring about new jobs should therefore be viewed by the LPAs in a more positive manner than may previously have been the case. This appears understandable and even laudable, but is hampered by two fundamental problems.

Firstly, most forms of rural diversification or development are on a limited scale and create only a few new jobs. Secondly, such developments can readily clash with the other main plank of Government advice, namely that of transport. Infrastructure can be a critical factor in rural development, as there are so few local railway lines and generally inadequate (and uneconomic) bus

services. Country people are dependent therefore on private cars which would be considered to be socially and politically undesirable in most contexts, but is particularly so in the rural areas. Expense is one factor, in districts where incomes are already below the national averages, but infrastructure is another in that country roads are not built to a width or standard to take a greater flow of traffic, often now including larger commercial vehicles in addition to private cars.

Previously, LPAs were inclined to give consent to commercial developments in rural locations only where it would create employment that could be reached by the workforce by walking, bicycling or bus. In scattered communities, that are too small to sustain a bus service, such objectives would be impossible to achieve and as a result applications for commercial schemes tended to fail. It is difficult to see how DETR 'guidance' will allow LPAs to overlook the traffic problems and the concerns of their local electorates.

This introduces another aspect of the Rural White Paper, which I have nicknamed 'Power to the People'. The Government is keen to give local organisations a greater say in their own affairs and recommends a stronger sense of partnership between the various authorities. Parish Councils, for example, are to be given a larger role in the formulation of Local Plans and whilst this may have political merit, it could also be counter-productive in that it is the local communities and their councils that are most aware of potential traffic problems and therefore most resistance to them.

The financial aid that is offered in the White Paper is in two forms, coming largely from the England Rural Development Plan (ERDP) and also through rate relief. The ERDP comes under a European Directive and is largely funded by the European Commission. In this context it provides finance mostly for environmental schemes or for marketing costs or for training. Each of these has its importance, but none is likely to produce much stimulus for widespread rural regeneration. Funding is also being made available through the Redundant Building Grant Scheme, which was previously limited to specified Priority Areas. This could be of direct help to many potential schemes that are so often based on the conversion of outdated farm buildings, but the previous scheme was already heavily oversubscribed and the new extension is only for the current year until other measures may be introduced.

The seemingly generous proposal that newly developed local businesses should be given relief from local rates is in fact only in the form of a consultation process between the DETR and the local authorities. Even in its originally suggested form such relief is to be time limited and available only to premises with a relatively low rateable value. Whether local authorities will respond willingly to a Government diktat requiring them to give up part of their income remains to be seen.

Notwithstanding the apparent practical shortcomings in the Rural White Paper, the Government is keen to promote development and diversification within the countryside. This certainly matches the mood of the market place in so far as many farmers and landowners are looking for ways of generating new income or capital wherever possible.

Such opportunities, however popular they may appear to be, are not available in every situation and much depends on location and a host of other factors. The general assumption that all farmers can now be helped by going in for non-agricultural ventures is a dangerous one. There may be numerous examples of successful barn conversions, farm shops, or driving ranges but this does not mean that they can be implemented just anywhere or by any old means. Farmers are however very self sufficient, being used to doing things for themselves, but most have no experience in development matters and are loathe to take outside advice. Diversification tends often to be 'home spun' and created by the use of farm labour and equipment and, once implemented, can raise a host of problems for both solicitors and surveyors.

Option agreements can be a particular area of concern and of missed opportunity. When landowners are approached by developers, there is a danger that one sided deals may be struck. As the planning process can take time and as options agreements are often for a period of some years, the consequences of such arrangements can affect a farm long after they were originally set up. In particular, a farm may have to be sold as the anticipated capital from development fails to materialise in time.

For land agents, there is a need to ensure that the right steps are being taken within the planning process, whether in influencing the Local Plan or in applying for a specific consent; that the right agreements are made with developers; and that the proposals have been properly researched.

For conveyancers, problems may arise over option agreements still in force at the time of a sale or with unfulfilled planning conditions and other regulations. Listed below are some of the issues faced by surveyors and which could be of consequence when a property is subsequently sold. (They are given in alphabetic order, rather than in any sequence of importance!):

Access and Services: If the farm is subsequently split up and sold, a purchaser might not want to take responsibility for water supplies and maintenance of access, even though the original farmer was accustomed to doing so.

Building regulations and planning requirements: A purchaser will be concerned to know whether the development has been properly constructed and whether section 106 commitments have been fulfilled.

Covenant: Those that prevent the development of retained land or prohibit uses that could affect the developer's scheme, could devalue the original deal. Some options are agreed by developers only to prevent land being built upon so as to protect another of their own schemes in the neighbourhood.

Market Value: Some investors look for non-agricultural potential and may not be interested if such development is already assigned. This could affect the local market by taking away an important element of outside competition. Diversification, such as barn conversions, are often adjacent to the farmstead which then becomes less appealing to potential purchasers due to the interference and lack of privacy.

Option arrangements: The formulae used should allow an appropriate return to the landowner and be based on clear definitions. Questions are likely to arise about inflationary uplift, overage and deduction of planning costs etc. If the agreement is badly drafted, the landowner would get less than expected and purchaser would discount accordingly.

Specialist uses and expertise: Schemes that depend on a particular skill may not appeal to the average purchaser. Developments can create local resentments, even if done by a third party or former owner.

Tax considerations: Tax is always an issue and needs to be properly planned, especially where large capital sums are involved, although in this scenario it is probably of more concern to the grantor of the option than to any subsequent purchaser.

Tenancies: The landowner must be able to grant possession when an option is exercised. This may be quite complex in cases of phased developments. Where tenants have diversified, there is a need for proper clauses for non-agricultural use and compensation arrangements, especially in specialist cases.

There is a general expectation that farmers should diversify, due to national or local government policies and to the growing evidence in the countryside of new schemes and developments. Such alternatives are however not always feasible, depending on location and other circumstances. There is a danger that people will embark on schemes that are not viable. They may often be entered into from a position of financial weakness which is then exacerbated by the loss of income through land and resources being taken out of the farm enterprise and a lack of return during the start up period.

Some help in business planning can now be gained from being able to take 'free' consultancy advice through the Rural Enterprise Scheme. There can be a more hidden danger in that projects that are viable at the outset may founder later, as others are introduced within the same locality or as markets change. Examples of this can be seen where golf courses were built at a time when it was widely, yet wrongly, forecast that the sport would be expanding or

where farm shops may have been eclipsed by the opening of a local garden centre or a new highway.

Planning policies themselves are also liable to change, not just when new Structure Plans are prepared but also due to political influence, such as in the imposition of regional housing targets, or in response to changing events as in the case now of not building on flood plains. These eventualities all need to be taken into account when negotiating conditional option agreements.

There is an assumption that agriculture in the UK has to find a new direction, in which it will be more involved in conservation and other environmental measures and receive less support for food production. This implies that conventional family farming will no longer be viable and that new uses must be found for land and buildings. There is an obligation therefore on all owners, and tenants, to look at these possible alternatives and to analyse the potential for development or diversification. This may produce a vital way forward but it is also equally important to be ready to recognise circumstances when such opportunities are unavailable or likely to fail and when their introduction may prejudice the integrity of the property itself.