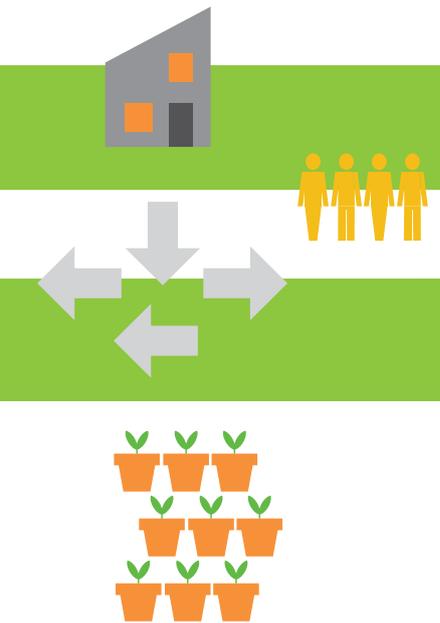


# UNDERSTANDING THE PLANNING SYSTEM A GUIDE FOR SMALLHOLDERS AND COMMUNITY FOOD ENTERPRISES



# INTRODUCTION



**This guide aims to inform smallholders and community food enterprises (CFEs) in England with what they need to know about the planning system for small-scale agricultural operations run with an environmentally sustainable ethos, and in particular in relation to applying for planning permission for low impact agricultural dwellings.**

Across the UK, smallholders and CFEs are providing seasonal, sustainable, locally grown food for local people. They are rebuilding relationships between producers, businesses and consumers, and instilling cultures of collaboration and fair trade. Perhaps most significantly for our local economies, they are helping people build rewarding land-based livelihoods as part of local enterprises operating across the supply chain.

Amongst the challenges faced by those wishing to set up new agricultural enterprises is the prohibitive cost of land, in particular land to which a dwelling is attached. The availability of farming tenancies is also severely constrained. They often find themselves in a position of securing land that requires development to enable it to be successfully and sustainably managed, including needing planning permission for new structures and dwellings.

Shared Assets supports the management of land for the common good. Through our Better Land-based Economies project (2015-17), we have worked with and supported three leading community food enterprises, Ecological Land Cooperative, Kindling Trust, and Organiclea as they work to access land, grow their businesses and create new livelihoods. This work was funded by Friends Provident Foundation.

## Low impact agricultural dwellings and community food enterprises

This guide is primarily concerned with low impact agricultural enterprises that are live-in food production businesses with a focus on environmental and social sustainability. This can be understood in contrast to the scale and expected financial returns of large-scale agricultural operations.

Community food enterprises (CFEs) are social enterprises, community businesses, and cooperative organisations. As well as producing, processing or distributing food they aim to provide multiple services and social benefits. These can include learning and training through food activities, improved wellbeing through the delivery of physical and mental health services, providing healthy food and green space, strengthening local trade, or encouraging green growing and business practices. Whilst the vast majority of these do not require on-site accommodation, where they do many of the same material considerations are applicable.

## Using this guide

Local planning authorities often assess applications for low impact agricultural dwellings against criteria normally used for conventional large-scale agriculture and on this basis refuse them, only for their decisions to be overturned at appeal.

Due to limited financial resources smallholder and CFE applicants are less likely to be professionally represented, particularly at application stage. As such it is especially important for them to understand as much about the planning system as possible. We would however always recommend that people seek professional advice from chartered town planners or other qualified experts when making applications.

# GENERAL PRINCIPLES WITH REGARD TO AGRICULTURAL PLANNING

**In this section we cover the primary elements of the planning system that are relevant to all agricultural proposals:**

- **What is and isn't covered by permitted development**
- **The role of the development plan in planning decisions**
- **The role of national policy in planning decisions**

## Permitted Development

The **Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO)** sets out what forms of development are considered to be 'permitted'; either with Prior Approval applications<sup>1</sup>, or in some instances without requirement for a planning application. Importantly there are different permitted development rights depending on the size of the agricultural unit.

Permitted development for agricultural units that are 5 hectares or greater is more permissive, and can include buildings and polytunnels; note that the unit does not have to be a single parcel of land. The erection of buildings is not included in permitted development for agricultural units of less than 5 hectares (but not less than 0.4 hectares), however the extension or alterations of buildings, for example, is included. In all instances the development should be 'reasonably necessary' for the purpose of agriculture within the unit. Reasonably necessary is not defined in the GPDO, but it is useful to note that D1(1) of Part 6 of the GPDO defines 'agricultural land' as meaning *"land which, before development permitted by this Part is carried out, is land in use for agriculture and which is so used for the purposes of a trade or business."*

It is important to note that retrospective prior notification applications are not possible, and such permission can only be achieved by a full planning permission.

Year-round agricultural workers' dwellings are not covered by permitted development. However, there are allowances in the GPDO (2015) (Part 5, Class A) and the Caravans Act (1960) (Schedule 1, paragraph 7) *"for the accommodation during a particular season of a person or persons employed in farming operations on land in the same occupation."* However, this does not mean that caravans can remain on site all year round and they will need to be removed once the work is finished.

<sup>1</sup> This is where the developer must, before beginning the development, apply to the local planning authority for a determination as to whether the prior approval of the authority will be required as to the siting, design and external appearance of the building, the siting and means of construction of the private way, the siting of the excavation or deposit or the siting and appearance of the tank, as the case may be.

# GENERAL PRINCIPLES WITH REGARD TO AGRICULTURAL PLANNING CONTINUED

## The development plan

Planning law requires that applications for planning permission must be determined in accordance with the local development plan.

When a decision is made on a planning application only certain issues are taken into account, these are often referred to as 'material considerations'. These are helpfully described by Planning Aid England in their Material Planning Consideration guide<sup>2</sup>. The development plan (also sometimes known as the local plan or local development framework) is the planning policy for a specific district or borough. It will contain specific policies to guide development. There is likely to be a specific policy that covers agricultural dwellings. There will also be a number of policies that it may be useful to take into consideration. Of particular relevance may be:

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### Flood risk

If you wish to develop land in zones 2 or 3 you may need to commission a Flood Risk Assessment.<sup>3</sup>

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### Visual impact

It is important that whatever you are wishing to develop blends into its surroundings. This is particularly relevant in statutorily designated areas such as Areas of Outstanding Natural Beauty and National Parks. You may for instance need to consider issues such as design, construction materials, location or planting that will screen permanent or temporary structures from view.

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### Drainage

You will need to consider how your proposals will manage surface water and foul drainage.

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### Access

The safe access of vehicles to/from your site is an important consideration, particularly if you wish to apply for an agricultural dwelling, or if you are likely to be hosting groups, visitors, or volunteers as part of your activities.

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### Ecology

Depending on the existing habitat and potential designations that the site falls within, a Phase 1 Habitat Survey may be required. This assessment should demonstrate how the proposal will produce a net gain in biodiversity and provide mitigation and enhancement both during and after construction. Depending on the results further protected species surveys may be required.

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### Heritage

If the site is within close proximity of a listed building or other heritage asset, this will be a material consideration and may require an impact assessment. The local authority's archaeological records may indicate a requirement that an archaeological survey is undertaken.

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### Contaminated land

The local authority may ask that a contaminated land assessment be undertaken. This will look at available historical and environmental information, and also include a site walkover, to determine potential contamination and identify what impacts any contamination may have.

<sup>2</sup> <http://www.rtpi.org.uk/media/686895/Material-Planning-Considerations.pdf>

<sup>3</sup> It is important to note that there is a presumption against the stationing of caravans in flood zones 2 and 3a/b (the areas least at risk are classified as flood zone 1).

# GENERAL PRINCIPLES WITH REGARD TO AGRICULTURAL PLANNING CONTINUED

## National policy

The government's national policy for planning is called the National Planning Policy Framework (NPPF). This sets out the Government's planning policies for England and how they expect them to be applied. The most directly relevant section of the NPPF to low impact agricultural dwellings is paragraph 55:

*55 ...Local planning authorities should avoid new isolated homes in the countryside unless there are special circumstances such as:*

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

The key point here is that the NPPF supports the principle of new homes in the countryside for rural workers where 'essential need' can be demonstrated. For agricultural dwellings this involves a number of factors that are outlined below.

## THE LEGACY OF PPS 7: ANNEX A

**Paragraph 55 of the NPPF is fairly brief and does not provide any detail about how applications for agricultural dwellings will or should be assessed. As such it is helpful to refer back to previous planning policy. Planning Policy Statement (PPS) 7: Annex A, Agricultural, Forestry and other Occupational Dwelling provided detailed guidance regarding rural workers' dwellings. Whilst it no longer forms part of national planning policy, the lack of more detailed guidance in the current framework has meant that many local authorities have reproduced elements of PPS7: Annex A in their local plans, or are still reliant on old policies which pre-date the NPPF.**

The detailed guidance in Annex A set out two sets of criteria against which proposals for permanent and temporary agricultural dwellings should be assessed: the 'functional test' and the 'financial test'.

### Functional test

The functional test required that evidence be provided to demonstrate that temporary or permanent agricultural workers' dwellings were essential for the proper functioning of the enterprise, ie one or more workers had to be readily available at most times. This is similar to the requirement to demonstrate 'essential need' in paragraph 55 of the NPPF.

### Financial test

The financial requirements of Annex A differed between temporary and permanent proposals, with an expectation that new enterprises would first seek temporary permission (generally three years) before applying for permanent permission once established. For temporary permission it was necessary to provide evidence that the proposals had been planned on a sound financial basis. It was also necessary to provide evidence of a firm intention and ability to develop the enterprise (it is noted in the criteria that investment in new farm buildings was a good indication of intentions).

# THE LEGACY OF PPS 7: ANNEX A CONTINUED

For permanent permission it was required that the agricultural unit be established for at least three years, that it was profitable for at least one year, that it was financially sound, and that it had a clear prospect of remaining so. This was clearly more arduous than for temporary permissions.

In the context of low impact agricultural dwellings perhaps the most important part of the financial criteria is set out in para 8 of Annex A:

*In applying this test..., authorities should take a realistic approach to the level of profitability, taking account of the nature of the enterprise concerned. Some enterprises which aim to operate broadly on a subsistence basis, but which nonetheless provide wider benefits (eg in managing attractive landscapes or wildlife habitats), can be sustained on relatively low financial returns.*

The key point here is that financial viability does not automatically mean the need to provide high financial returns, particularly where there are other benefits to a proposal. There is no financial test set out in paragraph 55 of the NPPF. However, it should be noted that in an appeal decision at Slight Hill<sup>4</sup>, Cornwall, the Inspector took the view “*that despite its lack of status, Annex A is still a potentially useful tool in assessing whether an on-site dwelling would be justified.*”

We would suggest where Annex A is used as a tool for assessing proposals for low impact agricultural dwellings, it should be taken as a whole and that regard is had for paragraph 8 concerning subsistence enterprises that provide other benefits. If you are writing your own application this is an important point to make.

## The intention of the policy

When making applications for low impact agricultural dwellings, it is useful to make reference to the underlying purpose of the policy within both paragraph 55 and previously Annex A which is to allow for genuine new agricultural enterprises, but to prevent new agricultural dwellings being created where there is a risk that the enterprise will fail and the dwelling will become non agricultural.

This point was addressed by the Court of Appeal in **Petter and Harris v Secretary of State for the Environment, Transport and The Regions and Another (2000) 79 P. & C.R. 214**. The summary of the case provides a useful explanation as to the correct approach to take to such cases:

*A decision-maker must apply the underlying policy of preventing non-agricultural residential occupation arising in a case where a proposed agricultural occupation fails...*

*...The financial viability test is only relevant in the determination of whether the grant of permission, in whatever terms it might be granted would, because of the uncertain future of the agricultural activity, threaten to produce, in the future, a non-conforming residential use that would pass with the land; a use that had lost its agricultural justification.*

*Here, an unexpected but genuine application by somebody living by subsistence farming did not require a rigid application of criteria designed for commercial agriculture but a practical adaption of those criteria to secure the underlying purposes of the policy. Profitability was no guide to its genuineness and a poor guide to its probable continuation. The true question should have been whether the unit was sustainable in the hands of the first applicant and in that sense viable and likely to continue so, which would have probably been answered affirmatively had it been addressed by the inspector.*

The key point is that the intention of paragraph 55 is to allow for genuine new agricultural enterprises. This is perhaps the most important factor for the consideration of low impact agricultural dwellings. As with all planning matters, a proposal must be considered in the round, and weight given to genuine intentions and other material considerations (such as environmental benefits) as well as the financial test.

<sup>4</sup> APP/D0840/W/15/3132813

# ESSENTIAL NEED

**The key test in paragraph 55 of the NPPF for agricultural workers' dwellings is the demonstration of the "essential need for a rural worker to live permanently at or near their place of work in the countryside". As previously noted no further guidance is provided by which to interpret this.**

In this section we refer to relevant decisions that consider the factors contributing to need, before setting out a non-exhaustive list of the kinds of factors that may contribute to the demonstration of essential need.

## Wider interpretation of factors contributing to 'need'

With reference to key appeal decisions we can identify two key points with regard to demonstrating essential need. First, a combination of reasons that wouldn't individually comprise essential need can do so when taken together. Second, clearly compelling reasons for essential need are not limited to animal husbandry.

In an appeal in Dorset concerning a vegetable box scheme<sup>5</sup> the Inspector, having assessed 11 different reasons why the appellants should live on site, concluded that:

*"Although none of these matters individually would mean that workers need to be on hand day and night, taken together they make a compelling case."*

In considering a proposal at Hugletts Wood Farm<sup>6</sup>, a mixed smallholding, the Inspector found that whilst none of the individual components on their own justified living on the land, the complex mixture of activities was taken to amount to functional need. In appeals for two smallholdings at Fivepenny Farm<sup>7</sup> the Inspector recognised and expanded on an understanding of essential need that incorporated smaller day-to-day issues that require constant attention:

*"The diversity and character of this enterprise is bound to give rise not only to the occasional emergency, but also to a constant stream of smaller problems. These would demand attention on an immediate, or at least urgent, basis throughout the working day, but also during the early morning or long into the evening... I have no doubt that family living in a nearby village could turn out to help in a real emergency. However, it would not be reasonable or practical to rely on them to do so for the minor but much more numerous daily crises inevitable in an enterprise as diverse as that involved here in such an early stage in its development."*



<sup>5</sup> APP/F1230/C/07/2055628

<sup>6</sup> APP/C1435/C/00/1050705, Hugletts Wood Farm

<sup>7</sup> APP/F1230/C/04/1162420,21,22,25

# ESSENTIAL NEED CONTINUED

## List of factors that may comprise essential need

An example of factors that may be considered to contribute to essential need are set out below; please note that this is not an exhaustive list, and that different combinations of factors will be relevant in different cases.

### Work required at unsociable hours

The labour-intensive nature of low impact holdings means that a constant flow of tasks and problems need to be attended to throughout the day and into the night, some of which cannot be planned in advance or anticipated. This was considered by the Inspector in a case at Highdown<sup>8</sup>.

### Economy of energy

Rebecca Laughton, in her book about ecological smallholdings, **Surviving and Thriving on the Land**<sup>9</sup> wrote: *“It is as important to sustain the energy of people working on an ecological project as it is for the project to achieve ecological or economic sustainability. If the people running the project become exhausted, ill or just too disillusioned with the hard work to continue, the potential ecological and economic benefits will not be realised.”* The multiplicity of tasks that running the enterprise will involve, which result in long working hours, can be mentally as well as physically demanding. Apart from the risk to the animals as discussed above, living off-site could cause an unsustainable level of stress, and such an arrangement may not be feasible for the business.

### Security

All agricultural enterprises are at some risk from theft or damage, however this can be a significant factor in some cases. This may overlap with animal welfare.

### Interaction with guests & visitors

Sharing the social and environmental benefits with the local community is often a key element of such proposals. It is important to have someone on site in order to facilitate these interactions as well as to ensure visitors are kept safe.

### Subsistence lifestyles

The economic model on which low impact agriculture is built may necessitate a subsistence lifestyle. Living on site reduces costs associated with fuel, rent and expenses from lost crops and equipment due to slower response times; these reduced costs may be significant to the success of the enterprise. It is important to recognise, as set out in the Petter and Harris<sup>10</sup> judgement, that this approach is in its own right a legitimate form of farming which can be consistent with the intentions of agricultural dwellings policy.

### Livestock

Different tasks will need to be undertaken on a regular basis to ensure the welfare of livestock, including for example, mucking out, feeding, medication, mob-grazing, and so on. This may be the case even when the numbers of livestock are small. Particular care may be necessary when livestock are giving birth. Protection from predators, particularly for smaller animals, may be significantly aided by an on-site presence. The nature of low impact agriculture is that the diverse range of activities means that escaped animals can be particularly destructive to crops. An on-site presence helps to monitor and quickly respond where necessary.

### Propagation of young plants

Seedlings and young plants are particularly vulnerable to changes in weather and temperature, and benefit from quick responses to avoid problems.

### Ventilation

Ventilation of greenhouses and other growing spaces is an important part of horticultural practices, however their automation is prohibitively expensive and potentially impractical on a small scale.

### Pests and disease control

The constant monitoring of pests and diseases is important for the successful growing of crops. For example: in damp conditions slugs and snails can decimate crops overnight if not kept in check, which is achieved by a regime of patrol in early morning and at night; and crops may need to be uncovered at certain times to minimise the growth of moulds, and need to be re-covered at the correct times in order to protect from pigeons.

### Irrigation

It is likely a mix of automated, semi-automated, and manual watering will be utilised; the latter in particular is labour intensive but can allow for greater yields per area due to more intensively cultivated polycultures.

### Frost protection

Frost protection will often be put in place outside of normal working hours.

### Weather emergencies

High winds, torrential rains, and high temperatures are becoming more prevalent due to climate change. These can be destructive to crops as well as infrastructure, and require quick responses in order to minimise damage.

### Charcoal making

Charcoal burning is the process of making charcoal from seasoned wood. Whilst not strictly an agricultural activity, it is one that food producing enterprises may undertake as part of a diverse holding in order to manage and add value to woodland. Depending on the size of the kiln the burn may take c. 24 hours, and constant supervision is required during this time.

### Diversification

This may include elements of the enterprise such as camping. Farm diversification is encouraged by planning policy and such activities fall within the realm of a ‘rural worker’.

<sup>8</sup> APP/C3810/A/00/1056202

<sup>9</sup> Laughton, R. (2008) *Surviving and Thriving on the Land: How to use your spare time and energy to run a successful smallholding*, Green Books: Cambridge (UK).

<sup>10</sup> (2000) 79 P. & C.R. 214

# DEVELOPMENT PLAN CRITERIA

**Applications should be determined in accordance with the development plan unless material considerations indicate otherwise. In this section we set out guidance for the most common development plan policies specific to this kind of development.**

## Functional test / essential need

It is likely that a rural workers' development plan policy will require that functional/essential need be demonstrated. This is consistent with national policy which is clear that new rural workers' dwellings need to demonstrate an essential need to be on or near the site at most times. As discussed in detail above, the key points are:

- the particular nature and needs of such enterprises
- the intentions of the rural exception policy

## The financial test / a sound financial plan

As noted above, whilst there is no requirement in national policy that a financial test is met, where such a test is present in the development plan it is reasonable that decision-makers will want to ensure that proposals are likely to be financially sustainable. For applications for temporary permission, it is often the case that you will need to provide evidence of the enterprise having been planned on a sound financial basis.

Any test of financial soundness should be appropriate to the proposal. For instance it is unlikely to be appropriate to assess new or emerging enterprises with the full financial test, instead an indication of sound financial planning is more suitable. A realistic and well-drafted business plan is useful evidence for this purpose.

The financial test is generally applied to an application to make a temporary development permanent, and it is usually expected that in 1 of the 3 preceding years the enterprise should have been profitable.

Where the financial aspects of a proposal are assessed, the key point is that the assessment should have regard to the underlying intention of the agricultural dwelling policy. The decision-makers should have brought to their attention the specific nature of low impact enterprises, including their likely diversity and inter-relatedness of elements, and in particular the expectations of financial return. As set out in *Petter and Harris*<sup>11</sup>, the judge recognised that profitability was not a useful indication of genuineness or probable continuation. A subsistence wage, in other words, can be considered acceptable.

## Evidence of a firm intention

The development plan may include policy that requires evidence to demonstrate a 'firm intention' and ability to develop the enterprise. Helpful guidance is set out in Annex A paragraph 12(i) which states that investment in the enterprise, such as in farm buildings, is a good indication of the applicant's intentions.

In instances where the proposals are fully prospective however, such an approach is not possible. We would suggest that if you are able to demonstrate essential need then this condition is likely to be met. Any previous experience of working in agriculture would also be useful to highlight.

<sup>11</sup> *Petter and Harris v Secretary of State for the Environment, Transport and The Regions and Another* (2000) 79 P. & C.R. 214

## Alternative accommodation

The development plan may also require you to demonstrate that your accommodation needs cannot be met by alternative accommodation either on or near the site. In our view there are several key points to consider:

- It is very unlikely that there will be a dwelling already on site
- It is unlikely that alternative accommodation sufficiently nearby will be available, or in instances where it is available, that it will be affordable to the applicant
- Should the proposals satisfy the essential need test, it is unlikely that alternative accommodation that is not on site would be appropriate



# OTHER MATERIAL CONSIDERATIONS

## Sustainability

The NPPF sets out the three dimensions to sustainable development: environmental, social, and economic. These dimensions should not be addressed in isolation as they are mutually dependent. In short, the NPPF promotes a holistic approach to sustainability in assessing planning proposals.

Many proposals for low impact agricultural dwellings seek to mitigate climate change by reducing carbon emissions and moving to a low carbon economy, and enhance biodiversity, whilst at the same time also providing economic and social benefits.

General characteristics that will apply to most applications are set out below, albeit that this is a non-exhaustive list:

- enhance the vitality of the local rural communities by supplying homes in the area with locally grown food and other goods
- subsidise their own food consumption with food grown on site, decreasing their carbon footprint
- support local agricultural services by using local contractors to service and repair machinery
- have the potential to offer more employment opportunities as they grow
- purchase local goods and services that support services in nearby villages
- utilise organic farming methods to the benefit of the environment
- reduce dependence on travel by private car by living and working at the same site
- enhance natural resources and the ecological value of the landscape, resulting in a net increase in biodiversity

These are material considerations that are supported by policies in the NPPF, and which should be given weight in the planning balance. It is important to highlight what you think is sustainable about your proposal, but remember that it is proving the essential need that is the most important part of gaining permission.

## SUMMARY

### **In this section we have summarised some of the key points in this report:**

- Applications for planning permission must be determined in accordance with the development plan, unless material considerations indicate otherwise
- Of key importance is the intention of the policy (para. 55), which is to allow for genuine new agricultural enterprises
- Proposals will need to demonstrate an essential need to live at or near their place of work
- Factors that contribute to essential need may be wide ranging, and are different in the case of low impact holdings (eg labour-intensive activities) than for conventional agriculture
- There is no financial test in paragraph 55. The requirement for a financial test, or to demonstrate sound financial planning, may however be included in the development plan
- Profitability is not necessarily a useful indication of genuine intention or probable continuation. A subsistence wage can be acceptable within policy terms
- The demonstration of essential need will likely mean that alternative accommodation, where available, is not appropriate
- The sustainable nature of such enterprises is a material consideration

# FURTHER RESOURCES

## In this series

**Local economic resilience:** the role of community food enterprises  
A guide for local authorities

**Access to land:** working with local authorities  
A guide for community food enterprises

**Essential rural workers' accommodation for small-scale agriculture**  
A guide for local authorities

**Local economic resilience:** the part you play  
A guide for community food enterprises

**Growing for change:** creating good livelihoods for a better food system  
A guide for community food enterprises

You can find these resources at:  
[www.sharedassets.org.uk/innovation/local-land-economies/](http://www.sharedassets.org.uk/innovation/local-land-economies/)

## Project Partners

**Shared Assets** is a think and do tank that provides practical advice, support and training to landowners and communities who want to manage land as a sustainable and productive asset [www.sharedassets.org.uk](http://www.sharedassets.org.uk)

**Kindling Trust** support new organic growers in Greater Manchester through their FarmStart training programme, and have established and support a cooperative of growers and buyers, and a worker owned organic box scheme [www.kindling.org.uk](http://www.kindling.org.uk)

**Organiclea** run an organic market garden, a veg box scheme, provide training for new growers in London, and help them access land and set up new enterprises [www.organiclea.org.uk](http://www.organiclea.org.uk)

**Ecological Land Cooperative** secure land to develop affordable sites for farming, forestry and other rural enterprises, and opportunities for ecological land-based businesses in the UK [www.ecologicaland.coop](http://www.ecologicaland.coop)

**Friends Provident Foundation** is a grant-making charity whose Building Resilient Economies programme aims to contribute to a more resilient, fairer and sustainable economic system [www.friendsprovidentfoundation.org](http://www.friendsprovidentfoundation.org)

