

A G E N D A

Environment Scrutiny Committee

Date: **Wednesday, 23rd June, 2004**

Time: **10.00 a.m.**

Place: **The Council Chamber,
Brockington, 35 Hafod Road,
Hereford**

Notes: Please note the **time, date** and **venue** of
the meeting.

For any further information please contact:

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**County of Herefordshire
District Council**

AGENDA

for the Meeting of the Environment Scrutiny Committee

To: Councillor J.H.R. Goodwin (Chairman)
Councillor W.L.S. Bowen (Vice-Chairman)

Councillors P.J. Dauncey, G.W. Davis, Mrs. A.E. Gray, K.G. Grumbley,
T.W. Hunt, R. Mills, J.W. Newman and Miss F. Short

	Pages
1. APOLOGIES FOR ABSENCE	
To receive apologies for absence.	
2. NAMED SUBSTITUTES (IF ANY)	
To receive details any details of Members nominated to attend the meeting in place of a Member of the Committee.	
3. DECLARATIONS OF INTEREST	
To receive any declarations of interest by Members in respect of items on the Agenda.	
4. REVIEW OF THE VOLUNTARY CODE OF PRACTICE FOR THE USE OF POLYTUNNELS IN HEREFORDSHIRE	1 - 42
To consider the findings of the Polytunnel Review Working Group following the review of the Voluntary Code of Practice for the use of Poly tunnels in Herefordshire.	

PUBLIC INFORMATION

HEREFORDSHIRE COUNCIL'S SCRUTINY COMMITTEES

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The purpose of the Committees is to ensure the accountability and transparency of the Council's decision making process.

The principal roles of Scrutiny Committees are to

- Help in developing Council policy
- Probe, investigate, test the options and ask the difficult questions before and after decisions are taken
- Look in more detail at areas of concern which may have been raised by the Cabinet itself, by other Councillors or by members of the public
- "call in" decisions - this is a statutory power which gives Scrutiny Committees the right to place a decision on hold pending further scrutiny.
- Review performance of the Council
- Conduct Best Value reviews
- Undertake external scrutiny work engaging partners and the public

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COUNTY OF HEREFORDSHIRE DISTRICT COUNCIL

BROCKINGTON, 35 HAFOD ROAD, HEREFORD.

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REVIEW OF THE VOLUNTARY CODE OF PRACTICE FOR THE USE OF POLYTUNNELS IN HEREFORDSHIRE

Report By: The Polyunnel Review Working Group

Wards Affected

County-wide.

Purpose

1. To consider the findings of the Polyunnel Review Working Group following the review of the Voluntary Code of Practice for the use of Polyunnels in Herefordshire.

Background

2. At their meeting on 6th February 2003, Cabinet agreed to adopt a Voluntary Code of Practice to Control the use of Polyunnels. The agreed policy provided for the operation of the Voluntary Code to be reviewed after 12 months.
3. Environment Scrutiny Committee on 23rd January, 2004 established a Polyunnel Review Working Group to look at the Voluntary Code of Practice and considered the terms of reference for the review. The Scrutiny Committee were also aware that some members of the public had expressed concerns regarding the operation of the Code and that a complaint on this issue was being investigated by the Local Government Ombudsman. The Scoping Statement detailing the terms of reference; desired outcomes; key questions and timetable is included at **Appendix 1** to the attached report.
4. For ease of reference the current Voluntary Code of Practice is included at **Appendix 2** to the attached report.
5. The Review Group conducted a review of the Code with the objective of giving guidance to the Cabinet Member (Environment) on the best framework to put in place to regulate the use of polyunnels in Herefordshire and whether the Development Plan required amendment.
6. Arising from the review the recommended revised code (indicating the suggested changes) is attached to the report at **Appendix 4**.
7. The Review Group's report setting out the Groups approach to its task, its findings, and conclusions is attached.

RECOMMENDATION

THAT the Committee accept the Report of the Polyunnel Review Working Group and determines whether it wishes to agree the report and its findings for submission to the Cabinet Member (Environment).

BACKGROUND PAPERS

- None identified.

Scrutiny Report

Review Of The Voluntary Code Of Practice To Control The Siting Of Polytunnels In Herefordshire.

**Report Of The Polytunnel Review Working
Group.
June 2004**

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1. Full Scoping Statement for the review.
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REVIEW OF THE VOLUNTARY CODE OF PRACTICE FOR THE TEMPORARY AGRICULTURAL USE OF POLYTUNNELS IN HEREFORDSHIRE

By: The Polytunnel Review Working Group

1. Introduction

- 1.1. At their meeting on 6th February 2003, Cabinet agreed to adopt a Voluntary Code of Practice to regulate the agricultural use of polytunnels. The agreed policy provided for the operation of the Voluntary Code to be reviewed after 12 months.
- 1.2. The Environment Scrutiny Committee on 23rd January, 2004 agreed to do this and established a Polytunnel Review Working Group for this purpose. The Committee acknowledged that the issue cut across both the Environment and the Social and Economic Development areas of responsibility and noted that the Director of Environment had obtained the agreement of the Chairman of Strategic Monitoring Committee that Environment Scrutiny Committee would undertake the lead in the review as part of its remit to undertake policy review. The Scrutiny Committee were also aware that some members of the public had expressed concerns regarding the operation of the Code and that a complaint on this issue was being investigated by the Local Government Ombudsman. The Ombudsman has been advised of this review and has requested a copy of the final report.
- 1.3. The following Councillors were appointed to the Working Group:

Councillor W.L.S. Bowen	Environment Scrutiny Committee
Councillor G.W. Davis	Environment Scrutiny Committee
Councillor J.W. Edwards	Vice-Chairman of the Council.
Councillor D.J. Fleet	Chairman, Central Area Planning Committee
Councillor J Hope	Chairman, Northern Area Planning Committee
Councillor T. W. Hunt	Environment Scrutiny Committee and appointed Chairman of the Working Group.
Councillor Mrs R.F. Lincoln	Chairman, Southern Area Planning Committee
Councillor J. Stone	Social & Economic Development Scrutiny Committee.

- 1.4. The Environment Scrutiny Committee on 23rd January, 2004 agreed the terms of reference for the Review. The full Scoping Statement is attached at **Appendix 1**, which includes the following terms of reference:

- To review the voluntary Code of practice for regulating the extensive use of polytunnels in Herefordshire,
- To consider the appropriateness of the Code and associated processes in the light of relevant current planning policy, case law and guidance
- To consider how best to strike a balance between sustaining a key sector of the agriculture industry whilst protecting the landscape of Herefordshire and the interests of the wider community.
- Following the review to advise the Cabinet Member (Environment) on the best framework to put in place to regulate extensive polytunnel use in Herefordshire and whether the Development Plan requires amendment

1.5. The current Voluntary Code of Practice to Control the use of Poly tunnels in Herefordshire is attached at **Appendix 2**. The Code of Practice is intended to apply to the agricultural use of temporary polytunnels.

1.6. **Appendix 3** lists those who gave evidence during the Review.

2. Meetings of the Working Group

2.1. The Working Group had the clear intention that the current Voluntary Code should be fully examined in public in an open and transparent way and held two public meetings as described below. However, the Working Group recognised, particularly towards the latter stages of the review when dealing principally with the actual drafting of the report, that this would be more effectively carried out in private (7 meetings and 2 site visits) although the conclusions reached are set out fully in this report.

3. Method of Gathering Evidence

3.1. The Working Group evaluated the methods available for gathering evidence to undertake the review. They considered that written evidence should be invited from a range of external individuals or organisations. This was invited by means of a press advertisement placed with the Hereford Times, Hereford Journal, Ross Gazette, Ledbury Reporter and the Mid-Wales Journal. The advertisement appeared between 10th and 12th March, 2004.

3.2. The advertisement invited views on the success or otherwise, of the operation of the Voluntary Code. The public were also informed that a series of public meetings were to be held at which some interested parties would be invited to have their say.

3.3. Written responses, including e-mails, were requested by 20th March, 2004. A good response was received from both objectors and supporters. All correspondence received on the issue was presented to the Working Group members for consideration. Since the 20th March a number of further letters have been received and these have also been circulated to the Working Group. The sender's permission was not sought to publish the individual letters. The letters are therefore not publicly available but will be open to inspection by the Cabinet Member (Environment). The points made in the letters are reflected in this report.

3.4. In parallel with seeking views from the public and growers the Working Group decided to gather oral evidence from key officers of the Council concerned with County-wide Tourism Development, Economic Development and Land use. The list of witnesses interviewed is set out at Appendix 3.

- 3.5. An important part of gathering evidence was to go and see first hand the main areas of polytunnels in the County. The Working Group therefore undertook a site visit to various vantage points in the South Wye Valley area between Hereford and Ross-on-Wye, including Goodrich Castle. The Working Group also visited two farms where polytunnels are in use. A further site visit has been held to see new developments in coloured plastics. This is reported at section 7.15.
- 3.6. The Working Group contacted 19 local authorities, where it was thought polytunnels would be in use, to request information on their policy towards the use of polytunnels. Those authorities contacted are detailed at section 7.3.
- 3.7. The Working Group have been made aware of the following two websites concerning polytunnels in Herefordshire: www.geocities.com/polytunnelcontrol and www.tunnelfacts.co.uk. This information reflects the diverse attitude to Polytunnel use for soft-fruit growing.
- 3.8. The Working Group have endeavoured to keep interested parties informed of progress by letter and/or local press releases. Since the Working Group commenced the review the subject of polytunnels has received a great deal of coverage in the local and national media.

4. Evidence Gathering

- 4.1. The Working Group have received a wealth of evidence from many sources, (letters, e-mails and faxes). 10 indicated they were in favour of the Code. 64, which included 2 Parish Councils, expressed opposition to, or a degree of concern about the Code. They have also received oral evidence from both objectors and growers, first hand experience from a site visit, photographic evidence, statistical and anecdotal evidence.
- 4.2. Two of the Working Group meetings have been held in public at which 30 and 65 members of the public respectively attended. Where there were a large number of persons expressing a wish to address the Working Group, the facility was offered for them to meet prior to the meeting to nominate representative speakers. At the end of each witness session the Chairman invited the nominated representatives to make any further points. No further points were raised. At the end of each meeting the Chairman invited the audience to submit questions on issues they thought the Working Group should seek further information.
- 4.3. During the course of the review local and national press, television and radio have run items on the issue of polytunnels in the County.

5. Legal Implications

- 5.1 The Working Group heard a synopsis of the legal position with regard to Polytunnels from the Council's Legal Practice Manager. It also noted that the County Secretary and Solicitor has taken Counsel's opinion in relation to the use of Polytunnels for agricultural purposes (as defined in Section 336(1) of the Town and County Planning Act 1990 "T&CA"). Whether the erection of a polytunnel constitutes an operational development will depend on whether it constitutes a building operation. Section 551(A) T&CPA provides:

"For the purpose of this Act "building operations" includes:

- a) demolition of buildings;
- b) rebuilding;
- c) structural alterations of or additions to buildings; and

- d) other operations normally undertaken by a person carrying on business as a builder.”

Section 336(1) T&CPA provides, inter alia:

“In this Act, except in so far as the context otherwise requires ... “building” includes any structure or erection, and any part of a building as so defined, but does not include plant or machinery comprised in a building ...”

- 5.2 The planning law which applied to polytunnel activity in Herefordshire is not unique and the principles that the Council needs to apply are national principles.
- 5.3 The Working Group noted that the Polytunnel issue was not limited to the AONB around the Wye Valley but could occur anywhere in the County. That being said, it was useful to consider PPG 7 (para 4.8) with regard to the AONB which confirmed that the fact that an area was an AONB was a consideration but not the sole or overriding consideration when it came to development. The Council would have to also consider social and economic need in that area.
- 5.4 The Council also has to recognise the fact that agricultural land would still allow operations which were incidental to agriculture to take place without planning permission under the GPDO. What the Council had to consider was whether there was a development^{1 see footnote} upon the land at a given location and if so whether that development required planning consent. There was guidance in the PPG 7, which indicated that certain agricultural buildings were not in fact "buildings" in planning terms. The sort of temporary structure that was not a "building" would include a pig ark, a removable poultry hutch and similar buildings.
- 5.5 The Council had to consider the impact of relevant case law in determining whether a structure was a building which needed planning consent or not. In the case of Cardiff Rating Authority v Guest, Keen and Baldwin (1949) the Court of Appeal considered the meaning of the word “structure” the case concerned around the former East Moors Steelworks in Cardiff. A significant part of the plant comprised mobile furnaces which would tilt around a pivotal axis. The Company argued that these were "plant and machinery", not a structure and therefore could not be included when assessing the size of the building for rateable purposes. The Court concluded in that instance that in order to determine whether something was a structure or "in the nature of a structure" one would have to look at 3 issues, namely: size, permanence, and the method by which the apparatus was fixed to the ground.
- 5.6 The case was applied to the planning law context in the much more recent case of Skerrits. In the Skerrits case the test of size, permanence and method of fixing to the ground was adopted for planning principles. The case concerned an hotelier who erected a large marquee for 8 months of the year at the side of his hotel. The fact that in that case it was removed for only 4 months in each year led the Court to conclude that it was a structure due to its relative permanence^{2 see footnote}.
- 5.7 The only case which really concerns polytunnels was a planning inquiry decision (dealt with by an Inspector on behalf of the Secretary of State) namely Brinksmann. In the Brinksmann case the polytunnels did not cover plants which grew out of the ground. Instead it covered plants which grew from industrial sized grow bags which sat on trestle tables. This was a first instance decision and was persuasive rather than binding. Nevertheless it was held that the polytunnels in that particular case, and on those particular facts amounted to a permanent structure requiring planning consent. Part of the rationale in arriving at the decision was the fact that the sub soil would never be exhausted of nutrients as fresh grow bags could be brought in from time to time and therefore the location of the structure could remain fixed for a very long time. Evidence was given to the Working Group by both the objectors and the

supporters that where Polytunnels covered ground-growing plants the nutrients in the ground would be exhausted after two growing seasons and the Polytunnel would need to be re-sited elsewhere within the curtailage of the farm in order to sustain new crops. The tunnel might be put back on the same area of land after the soil had replenished itself, but this would not be for perhaps 3 or 4 years. There was a material difference where Polytunnels covered crops not grown in the soil as the authority of Brinksmann would tend to suggest that the structures would be permanent requiring planning consent in much the same way as would a glasshouse.

- 5.8 There is no national guidance on these issues and in consequence the Council has to strike a balance based upon the current case law (which was neither comprehensive or necessarily clear cut). In those circumstances the Voluntary Code (and adherence by the growers thereto) was a wholly appropriate way of dealing with the Polytunnel issue in those circumstances where a planning permission is not required.
- 5.9 The Working Group also heard advice on the issue of plastic ground cover and the use of horticultural fleece. The Working Group has heard from several objectors where the use of these materials is objected to either in isolation or in conjunction with soft fruit cultivation under polytunnels. In the former case it is outside the scope of this review, however, in the latter case it forms a necessary preparatory operation prior to the erection of the polytunnels themselves. It remains the case that not all use of ground cover plastic and fleece involves polytunnels but every use of polytunnels is preceded by the use of ground cover plastic and/or fleece. It is therefore the case that cultivation using ground cover is a specific means of horticultural cultivation and the use of polytunnels are one means of finishing off the cultivation of the produce.
- 5.10 The Working Group were advised that it is therefore the case that the use of such plastic is “ordinarily incidental” (per the Harrods case cited below). This is akin to a farmer who elects to grow crops which involve spraying three or four times a year as opposed to those farmers who elect to grow crops without any spraying. In which case each incidence of spraying is ordinarily incidental to the main operation.
- 5.11 The Working Group have also been reminded of the issue of “expediency” within the planning regime, with regard to enforcement. In short, every breach of planning control is not automatically enforced against. Enforcement only takes place where it is expedient to do so.
- 5.12 The DETR guidance “Enforcing planning control: Good Practice Guide for Local Planning Authorities” (1997) states at paragraph 3(ii) the provisions of Section 172(1)(b) enable the LPA to issue an Enforcement Notice where it appears to them “expedient to issue the Notice having regard to the provisions of the development plan and to any other material considerations”. It follows from these provisions that the question of “expediency” is a discretionary matter on which the LPA must themselves decide in the particular circumstance of each case. Provided the LPA have properly directed themselves in relation to consider any relevant provisions of the development plan and any other considerations which are clearly material for a planning purpose, their decision whether to issue an Enforcement Notice should be capable of withstanding any criticism that it was not well founded”.
- 5.13 Bearing in mind the development plan deals with permanent planning developments within its area the existence and adherence to any polytunnels code would constitute an “other material consideration” for the purpose of deciding whether or not it is expedient to enforce.

5.14 Footnote 1

5.15 Consideration was made as to whether the use of polytunnels amounts to an intensification of or is incidental to existing use of the land for which planning control is not required or whether it amounts to development in accordance with Section 55 of the Town and Country Planning Act 1990 which would attract the need for planning consent is taking place.

5.16 With regard to intensification, it has been held that where intensification is such that it has a material effect on the nature of the landscape it falls within the ambit of development. The Council is satisfied that the use of Poly tunnels in this way is not an example of intensification, but rather an operation to improve crop quality and not yield.

5.17 With regard to the question as to whether the use is ancillary to the primary use, the case of Harrods Ltd –v- Secretary of State (2001) is now authority that incidental should read “ordinarily incidental”. In the case of traditional hop-fields for example, it is submitted the erection of the poles and wires are ordinarily incidental, as the hops could not reach the required heights without them. In relation to soft-fruit cultivation however, fruit is capable of being grown without Poly tunnels, but the use of these adds to the fruit quality. It is therefore submitted Poly tunnel use is not ancillary.

5.18 Development is initiated in relation to operations at the time when those operations are begun (Town and Country Planning Act 1990 Section 56). This can include any work of construction in the course of an erection of a building which can be taken to include the marking out of the line and width of a road: Malvern Hills D.C. –v- Secretary of State (1982), the opening of a gap in a hedge: Thayer –v- Secretary of State (1992) but only where such work is suitably precise, genuine and consistent with the planning permission involved. The premise, poly tunnel development can be said to take place when the line for the “y” poles is staked out and certainly by the time the “y” poles are begun to be sunk.

5.19 The Working Group should be mindful of the distinction between ‘temporary’ development and permanent, but transient development.

5.20 Footnote 2

5.21 The case of R. Ramsey & J.P. Ramsey –v- Secretary of State and Suffolk Coastal D.C. (1997) considered the issue of where a temporary consent for vehicle off-road activities of 28 days per year could or could not constitute a change of use, by virtue of the constant presence of the infrastructure of such activities in the form of a track lay-out, sunken tyres etc. The Court in that case held that the land was so transformed permanently by these features that it constituted a change of use. Consequently the Working Group is entitled to consider the state of the site not only when the poly tunnels are in full use but during the non-operational periods of use.

6. Planning Position

6.1. When Do Poly tunnels Need Planning Permission?

6.1.1. The Working Group are aware that this question is frequently asked and have received the following advice from Planning Services:

6.1.2. The answer lies in planning law not policy. A Local Planning Authority (LPA) when considering a planning application can approve the application, approve

with conditions or refuse. In the absence of an application the LPA may only in law instigate enforcement action when it is considered expedient to do so by means of an enforcement notice. No prosecutable offence is committed until a landowner fails to comply with the terms of an enforcement notice. There can be appeals to the Secretary of State against any condition or conditions imposed on a planning permission, a refusal of planning permission or any of the requirements of an enforcement notice.

6.1.3. When considering polytunnels the Council was advised by growers that polytunnels did not stay on the same land for more than the life of a strawberry plant due to the needs of crop rotation. While the frames may stay over a crop ready for the next year the polythene is rolled up, removed from the frames and wrapped in black polythene over winter.

6.1.4. For planning permission to be necessary the works proposed or that have taken place must amount to development requiring planning permission. It was evident at that time polythene did not stay on the frames for longer than 6 months in any year and the frames were moved as the crop was rotated around the farm. A polytunnel only ever amounts to a functional structure when the polythene is in place, which is generally 6 months, or less.

6.1.5. There is little government guidance on the topic of temporary structures leaving it to the LPA to determine on the facts in each case whether the proposal amounts to a use of land or a structure requiring planning permission. Members have been informed that the use of land for agriculture is expressly stated in Section 55(2)(e) of the Town and Country Planning Act 1990, as amended, not to be development. There have been cases reported where on the facts it has been held that planning permission is required. In general three tests are used. These are size, degree of permanence and method of fixing in the ground, but these tests are not exhaustive. In each of these cases it is evident on the facts there is some degree of permanence leading to the view planning permission is required. This Council through the Voluntary Code has always maintained the view that any method of growing other than directly into the soil requires planning permission being an indicator of permanence. An example of this is tabletop growing at Bush Bank, which was applied for and granted planning permission. It is accepted by growers that where the intention is to use the same land for polytunnels continuously or intermittently for several seasons then planning permission will be required.

6.1.6. By their nature polytunnels appear as large structures but their method of fixing to the ground by 'y' poles screwed into the ground is no more than a support for the frames which themselves need to be roped down after the polythene cover is put on. There have been instances where these structures have been badly damaged by high wind, which tends to emphasise their seasonal nature.

6.1.7. To summarise planning permission would only normally be required where the clear intention was for the polytunnels to remain in place for an indefinite period made possible by the method of growing. In other cases it would not be thought reasonable to require applications where the likely functional life of the polytunnel was six months or less repeated for two growing seasons in total.

6.2. National And Local Planning Policy

6.2.1. The Working Group have been informed by the Council's Planning Services that national policy in respect of temporary structures can be found in paragraph C11 of Planning Policy Guidance Note 7 Revised. Paragraph C11 states:

“The Courts have held that some temporary structures used for agriculture are not ‘buildings’ in planning terms but are a use of land and so outside the general scope of planning control. Thus, temporary accommodation for livestock, such as ‘pig arks’ and moveable poultry shelters, may not be ‘buildings’ for planning purposes. The status of particular structures is ultimately a matter for the Courts to decide, on the facts of each case. A structure placed on foundations, secured to the ground and with, for example, facilities such as an integral water supply may constitute a building, whilst a structure without such features may constitute a use of land. In case of doubt an application may be made to the local planning authority for a Certificate of Lawfulness of Proposed Use or Development under Section 192 of the Town and Country Planning Act 1990 (as amended)”.

6.2.2. The draft consultation paper on new Planning Policy Statement 7 (PPS7) Sustainable Development in Rural Areas makes no mention of temporary structures.

6.2.3. In paragraph C11 referred to above, reference is made to criteria such as foundation, secured to the ground and with a water supply may constitute a building whilst a structure without such features may constitute a use of land. Under the Voluntary Code this Council has taken the view that subject to the terms of the Code the use of polytunnels is a use of land.

6.2.4. South Herefordshire District Local Plan Policy C4 is concerned with the protection of the Wye Valley AONB and states:

“Within the Wye Valley Area of Outstanding Natural Beauty, as shown on the proposals map, priority will be given to the protection and enhancement of the area’s natural beauty”.

6.2.5. Policy C5 sets out the consideration in terms of criteria for considering development within the AONB. Clearly the criteria apply where the development proposed requires planning permission and the Working Group have been advised that under the Voluntary Code the temporary use of land for polytunnels is not considered to amount to development requiring planning permission.

6.2.6. The Revised Deposit Draft Herefordshire Unitary Development Plan is now published and Policy LA1 is concerned with Areas of Outstanding Natural Beauty.

“Within the Malvern Hills and Wye Valley Areas of Outstanding Natural Beauty, priority will be given to the protection and enhancement of the natural beauty and amenity of the area in the national interest and in accordance with the relevant management plans.

Development will only be permitted where it is small scale, does not adversely affect the intrinsic natural beauty of the landscape and can be demonstrated either to meet local community or economic needs or enhance the quality of the landscape or biodiversity.

Exceptions to this policy will only be permitted when all of the following have been demonstrated:

- the development is of greater national interest than the purpose of the AONB;*
- there is unlikely to be any adverse impact upon the local economy;*
- no alternative site is available, including outside of the AONB; and*
- any detrimental effect upon the landscape, biodiversity and historic assets can be mitigated adequately and, where appropriate, compensatory measures provided.*

6.3. Effect On AONB And Elsewhere

- 6.3.1. Complaint about the visual effect of polytunnels on the landscape has mainly been generated by residents in the Wye Valley Area of Outstanding Natural Beauty. These residents live in elevated locations having splendid views of the Wye Valley and the river flood plain. It is on this fertile land that growers are using polytunnels to grow crops, which includes strawberries, and to a lesser extent raspberries. There has also been objection to the use of polytunnels in the vicinity of Dinmore Hill and at Brierley, Leominster.
- 6.3.2. In terms of impact on the Wye Valley AONB, the AONB officer has advised in a letter that the use of polytunnels in the AONB is focussed at two sites at Kings Caple and Walford which equates to about 0.3% of the total AONB land area or about 0.6% of the Herefordshire part of the AONB. The letter goes on to say that the impact of plastic be it ground cover or on polytunnels is completely out of keeping with the natural beauty and special qualities of an area of outstanding natural beauty. It is accepted, however, that it is extremely difficult to ameliorate polytunnels in a landscape due to their collective size, long distance visibility and the limited time they are on the field. On 8th March, 2004 the Joint Advisory Committee (JAC) for the Wye Valley of outstanding natural beauty issued the following statement: "The primary purpose of the AONB designation is to conserve and enhance natural beauty. This form of crop protection does nothing to conserve or enhance the natural beauty of the area, however, it is a legal and planning matter for the local planning authority as to whether the polytunnels require planning permission for their rotational usage. The JAC therefore supports the local planning authority, Herefordshire Council, in its review of the issues".

6.4. Environmental Effects

- 6.4.1. A number of issues were raised as part of the evidence to the Working Party. These included the effect of using polytunnels on soil condition, problems associated with noise from wind or rain on the amenity of nearby residents and the visual intrusion of waste polythene not cleared from land. In respect of soil condition the use of land for agriculture is defined in the Town and Country Planning Act 1990 as amended (Section 336) and under Section 55 (2)(c) the use of land for agriculture is deemed not to be development. Accordingly the local planning authority does not exercise control over any crops that are grown and hence the condition of soil is not a matter for planning.
- 6.4.2. Polytunnels are subject to the elements and in strong winds or other adverse weather conditions there have been problems ranging from loose plastic flapping, causing noise nuisance, to whole sites effectively being blown away. Irrespective of the current Voluntary Code, where nuisance is caused those suffering that nuisance are entitled to make a complaint to the Council about that noise or other nuisance. It would be a matter for the management of the enterprise to ensure nuisance was minimised. Another issue to be raised was the storage of waste or other polythene when not being used on the frames in locations such as under hedgerows where the polythene was visible and therefore deemed intrusive. The Working Group has been advised that waste polythene is recycled but where it is left for any period of time and causes an adverse effect on amenity the Council can under S.215 of the 1990 Act consider a remedy to restore the amenity of a particular location. However, such a remedy can only be used where there is harm to public interests.

6.5. Market Value Of Property

6.5.1. The Working Group have been advised that Planning Policy Guidance Note 1, revised, dated February 1997 provides guidance on general policy and principles. Paragraph 64 is concerned with private interests. It states the planning system does not exist to protect the private interests of one person against the activities of another, although private interests may coincide with public interest in some cases. In fact, "the public interest may require that the interests of individual occupiers should be considered. The protection of individual interests is one aspect, and an important one of the public interest as a whole", it can be difficult to distinguish between private and public interests, but this may be necessary on occasion. The basic question is not whether owners and occupiers of neighbouring properties would experience financial or other loss from a particular development, but whether the proposal would affect the amenities and the existing use of land and buildings which ought to be protected in the public interest. Good neighbourliness and fairness are among the yardsticks against which development proposals can be measured: for example, it might be material to consider the question of overlooking "the loss of privacy experienced by a particular resident".

6.5.2. With this guidance in mind it would not be normal for the local planning authority to consider market value of property as a material consideration. In this instance the growing of crops is outside of planning control being a legitimate use of land. The fact that polytunnels can be seen, be it in the AONB or elsewhere in the County, does not in the view of Planning Services, amount to so serious an effect on the living conditions of local residents that the local planning authority should intervene.

6.6. Removal Of Metal Hoops and Y Frames When Not In Use

6.6.1. Concern has been raised in representations that at the end of the specified period, metal hoops as well as polythene covers should be removed in order to minimise visual intrusion. Growers resist this proposal on grounds of cost where there would be a further crop taken from plants already in the soil. In terms of planning assessment the Working Group has taken the view that the impact of polytunnel framework is little different from the impact of the wirescape of hop yards which are a common feature of the Herefordshire landscape. Hop yards stand for generations and are not removed or taken down once the crop is harvested. In effect the hoops are removed once the plant is exhausted and rotation takes place. However, the Working Group are of the clear view, informed by the legal advice that the polythene and framework must be removed after the growing season of two years. It would depend on the individual circumstances for a particular site as to whether this needed to include all the ground work.

7. Some of the Key Issues Raised during the Review

7.1. The following are some of the key issues raised during the review together with the response by the Working Group.

7.2. The Economic and Tourism Issues

7.2.1. In accordance with the terms of reference for the review the Working Group have considered how best to strike a balance between sustaining a key sector of the agriculture industry whilst protecting the landscape of Herefordshire and the interests of the wider community. In this context the following is some of the main evidence received

- 7.2.2. The Working Group received evidence from the Council's Economic Investment and Development (Herefordshire Partnership) Unit that data is available from DEFRA for the period 2002 about fruit production in the UK. Soft fruit production was worth £135,368,000m, with imported soft fruit being worth £162,703,000. In 2002, the West Midlands accounted for 13% of strawberry and raspberry production, most of this being in Herefordshire and Worcestershire.
- 7.2.3. For farm incomes, the value of soft fruit has risen by 16% in 2003 and has impacted on total income from farming to give an income of an average £15,537 per full time person equivalent. Average farm incomes nationally have risen to £20,500, but this trend is not followed for livestock farms, where income in real terms has fallen to an average of £5,000. There is no data available on actual farm incomes in Herefordshire, but it would probably reflect national trends. Approximately 9% of the County's workforce is employed in agriculture, not counting brought in labour.
- 7.2.4. In Herefordshire, contracted labour was used by 30% of farmers (Herefordshire Farming Study 2001), with less full time hired labour employed. The June Agricultural Census for 2002 (the most recent carried out) indicates that 4984 people were employed in farming in Herefordshire – Full time farmers, full time employees and full time farm managers:3126; Part time employees: 456; Casual labour: 1402. By 2004 when the Farming Study Follow Up was undertaken, an increase of 9% on the 2001 figures for contractor labour was recorded.
- 7.2.5. There is an increasingly significant trend in the County in the use of casual labour from abroad. Anecdotal evidence collected from interviews with farmers (HFS Follow up 2004) indicates that competition on the global market, and the domination of supermarkets which demand better quality fruit with a more reliable longer season, has led to an increase in the use of polytunnels. Approximately 75% of the strawberries being grown in Herefordshire are produced in polytunnels.
- 7.2.6. There has been a decrease in the number of farms producing "small fruit" (raspberries, strawberries, etc) in Herefordshire between 1990 and 2002, from 117 to 74; however, the number of hectares under cultivation for small fruit has increased from 880 to 905 (DEFRA June Agricultural Census results).
- 7.2.7. The contracted labour brought in has a positive financial impact on the county, particularly in the market towns, with spending on food and drink, postage and services.
- 7.2.8. The Working Group heard evidence from the Council's Cultural Services - Tourism Unit that tourism is a vitally important part of the Herefordshire economy, and a sector in active growth. Recent research indicates that in 2001 approx 8.4 million visitors came to Herefordshire, bringing £271.5 million income to the County. Tourism supports an estimated 7,880 actual jobs, equating to 5,610 full time equivalent jobs.
- 7.2.9. Many Herefordshire businesses are wholly or partly dependent on tourism, including accommodation premises, cafes and restaurants, visitor attractions, museums, galleries, food and drink producers and retailers, shops, sports and activities operators etc. Tourism also plays an important role in sustaining facilities in rural areas – many village pubs, garages, shops and post offices would not be viable without visitor income. A substantial number of farms have also found it difficult to survive without diversifying into tourism.

7.2.10. The Working Group were also advised that Herefordshire is promoted by the Tourism Unit and tourism businesses as a quality destination whose greatest attraction is the beauty of its countryside, and also as a place with an healthy and diverse environment. The concerns of the Tourism Unit and tourist business include:

- **Landscape impact:** even small areas of polythene are visible from a long distance, because of the highly reflective nature of the material. Some parts of the County now have polytunnels covering many acres.
- **Environmental Impact:** reliable data on this seems hard to find. However, there are concerns over soil sterilisation and pesticide use effectively destroying the base of the food chain, soil impoverishment, ground-nesting birds and water run-off.

7.2.11. The Tourism Unit asked tourism businesses to comment on the issue, and to report comments from visitors. Most responses focused on the following points:

- Recognition of the need for growers and farmers to make a living – *‘An unattractive necessity for economic health...’*
- There is great concern for landscape impact – *‘Sites need to be chosen carefully...’* *‘should be monitored for minimal landscape impact...’*
- There is repeated concern at the scale of polythene cover, particularly the rapid increase in volume – *‘there is much more than last year’*.
- Concerns about lack of planning control – *‘should be controlled for length of time in situ’*

7.2.12. The Working Group considers that insufficiently detailed statistical and factual background has been established to draw any final conclusions regarding the balance between the economic effect of polytunnels on the County and the effect of polytunnels on tourism and where these two criteria clash.

7.2.13. Short of a specifically commissioned study, for which there are neither resources or time, the Working Group are unable to draw any final conclusions. The Cabinet Member (Environment) may consider whether further investigation on these points is needed to draw such conclusion.

7.3. Other Local Authorities Contacted –

7.3.1. During the early stages of this review representations were made to the Working Party that other Councils dealt with polytunnels differently to this Council.

7.3.2. At the request of the Working Group 19 Local Authorities were contacted by Planning Services to ascertain whether the issue of polytunnels had arisen within their area and if so, how they had dealt with the matter. The following authorities were contacted:

- Bath and North East Somerset
- Canterbury
- Chichester
- Fenland
- Forest of Dean
- Medway
- Newark and Sherwood
- North Devon
- North East Lincolnshire
- Peterborough
- Salisbury
- South Holland
- Stafford

- Surrey Heath
- Taunton Deane
- Waverley
- West Wiltshire
- Wokingham District Council
- Wychavon

7.3.3. The Working Group have been informed that responses were received from 8 authorities who confirmed that where it was apparent that they were permanent tunnels they treated polytunnels as though they were glass houses. These were used for small horticultural operations and could not be compared to the transient use of polytunnels in Herefordshire.

7.3.4. Wychavon District Council confirmed that Spanish polytunnels have not, as yet, become a problem within Wychavon. They are watching the situation with interest as they are aware that the demands for lengthening the growing seasons may lead to them being introduced in the Vale of Evesham.

7.3.5. Medway District Council who have been the 'home of the Wimbledon strawberry' have received planning applications in respect of buildings for strawberry production but have no planning history relating to polytunnels.

7.3.6. Forest of Dean District Council has dealt with an application for polytunnels on a large scale at a farm owned by a grower within Herefordshire. The application involved a tabletop growing system, covering a number of fields within the holding. Planning permission was granted for 5 years with a 50-metre restriction between properties and the tunnels.

7.3.7. Waverley Borough Council is currently investigating a grower in their area that has erected polytunnels on an equal scale to the large sites in Herefordshire. The strawberry crop is grown in the ground. They are currently discussing the matter with the owner and investigating any relevant legislation and case law. They have yet to determine whether the polytunnels require permission.

7.3.8. One of the largest soft fruit producers in the UK operates within Wokingham District Council's area. Polytunnels are treated as temporary structures unless there is a substantial degree of permanence i.e. a concrete base. A planning history search revealed that they have not dealt with or requested planning applications for the polytunnels on the farms operated by the soft fruit producer.

7.3.9. Despite further attempts to seek the comments from those authorities that had not responded, no further information has been received. It could be assumed that those authorities have not encountered the issue of polytunnels within their authority.

7.3.10. The Working Group have also been advised that there has been no change in Government guidance to local authorities about the treatment of temporary structures although renewed efforts have been made by this Authority to bring this matter to the Government's attention.

7.4. Economic Benefit to Growers –

7.4.1. The Growers maintained that following a number of years of decline in the agricultural business a realistic view had had to be taken for the future. There had been a need to review the UK farming economy and land usage, particularly when competing with the global market. Growers claimed they were

supplying what the customer, via the retailer, wanted namely: continuity and reliability of supply; quality; good appearance and a good shelf life (succulent and tasty strawberries with a good aroma). The strawberry production period had been extended from between 6 to 8 weeks in open fields to 20+ weeks through the use of polytunnels. The Working Group heard that using previous growing methods 50% of the crop met Class 1 standard where as now it was claimed that up to 80% of the crop reached the standard.

7.5. Visual effects –

7.5.1. Many objections, some from as far away as London and the Isle of Man, related to the views afforded in the County, which it was suggested were being blighted by large vistas of plastic. Some residents of the County were unhappy that they had to look out over acres of land covered by either ground cover, fleece or polytunnel. Visitors referred to the unique beauty of the landscape. The Working Group were aware that various types (Spanish, French etc) of polytunnel were available for use and to save any confusion over what type of polytunnel was being referred to, the definition of the type of polytunnel referred to by the Code of Practice, should be defined in clearer terms.

7.6. Effect on ‘Area of Outstanding Natural Beauty’ (AONB) –

7.6.1. There are two AONB’s in the County of Herefordshire. So far as the Working Group are aware, the Herefordshire side of the Malvern Hills AONB, due to its geography, would have a limited attraction for the siting of polytunnels. While a number of polytunnel sites can be seen in Herefordshire from this AONB, minimal comment has been received by the Working Group concerning sites in or near this AONB.

7.6.2. The area that raised most concern was the Wye Valley AONB. The Working Group have heard that in the Wye Valley AONB usage was still focussed on two sites with about 90 acres of polytunnel at Kings Caple and 150 acres at Walford. This equated to about 0.3% of the total land area or about 0.6% of the Herefordshire part of the AONB.

7.6.3. It was claimed by the growers that the flood plain of the Wye Valley with its fertile soil and good climatic conditions was an ideal location for this type of crop.

7.6.4. The Working Group noted that while AONB Management Plans touched on elements of environmental control, AONB’s were not enforcing bodies and were themselves awaiting guidance on the issue of polytunnel use in their areas.

7.6.5. The Working Group acknowledged that areas outside the AONB can be seen from within and vice versa.

7.7. Effect on environment –

7.7.1. A number of environmental issues have been highlighted to the Working Group:

7.7.2. Apart from the visual effect, objectors raised issues concerning the potential effect of polytunnels on the local environment through the growth in traffic down country lanes, the increased run off of rainwater from sites and the possible ingestion of plastic by animals. A further concern was that the intensive use and sterilisation would have an adverse effect on the fertile soil. It was suggested that strawberry crops could just as easily be grown in growbags in polytunnels located on brown field sites away from areas of natural beauty.

7.7.3. The grower view was that the use of pesticides had dropped and the use of natural insect predators and insect traps have increased. Hares, Swans and birds of prey numbers have increased. One grower informed the Working Group that he was a member of the Countryside Stewardship Scheme and had received recognition through a supermarket 'Nature Choice' award. A number of growers were working closely with agronomists to reduce the use of fungicides and claimed that this had on average reduced the spraying of crops from 6 to 4 times per year.

7.7.4. Having contacted the Department for Environment Food and Rural Affairs (DEFRA) for their comments on soil damage in connection with polytunnel sites, the Working Group have received from DEFRA Soils and Research Team the following response: "Strawberries are commonly grown under 3 different conditions - open field, under polytunnels or in glasshouses. In all cases the soil is sterilised -in most cases an injection of methyl bromide into the soil is used for this. However, this chemical will be phased out over the next couple of years (due to the fact that this is a greenhouse gas) and much research is currently in place to ensure viable alternatives." "Polytunnels ensure better quality and consistency in crop production - greatly reducing waste; making harvesting less labour-intensive; and significantly reducing the use of pesticides as they are more conducive to various forms of non-chemical pest and disease control." "The use of polytunnels does not impact any more on soil health than soft fruit crops grown in open fields."

7.7.5. The Working Group have been informed that rainwater run off was often collected for use. The Working Group were aware that water abstraction was governed through a method of licensing by the Environment Agency.

7.8. Distance from neighbouring property –

7.8.1. The current Code requires that the siting of polytunnels will be 30 metres from the nearest elevation of any dwelling subject to variation of that distance by agreement with that neighbour. A number of objectors felt that, if polytunnels were to be allowed, then this distance should be longer and measured from the boundary of the property. In considering this issue the Working Group have both seen photographic evidence submitted by objectors and have seen first hand views from a number of vantage points in the South Wye area. The Working Group noted that from comparative data The Forest of Dean District Council had, on one large scale farm operating a tabletop system in polytunnels, granted permission for 5 years with a 50 metre restriction between properties and polytunnels. The Working Group suggest to the Cabinet Member (Environment) that consideration be given to extending the distance from the nearest elevation of any dwelling (currently 30 metres) to up to 50 metres. This should be subject to the retention of the current stipulation that this be 'subject to variation of that distance by agreement with that neighbour'.

7.9. Use of landscaping –

7.9.1. The Working Group heard from Planning Services that the Landscape Character Assessment (LCA), referred to in the Code, is not an appropriate vehicle for assessing the impact on the landscape of polytunnels – this was best done as a visual assessment – but the appropriateness of mitigation measures can be partially directed by the LCA. The Working Group acknowledged that in flatter parts of the Country the use of measures, such as grey/green mesh windbreaks around a polytunnel site, may alleviate the visual impact. However, the undulating nature of the Herefordshire countryside made it difficult to hide polytunnel sites if viewed from any elevated position. The Working Group

acknowledged that while man made screening was beneficial, the use of natural methods e.g. leaving hedges to grow and tree planting, should be encouraged, particularly where sites were to be repeatedly used in crop rotation. The Working Group considered that references in the Code to the submission of a landscape impact statement be reworded to require a landscape impact statement. This would be particularly relevant for applications in, or adjacent to, AONB's.

7.10. The Time Period a Polytunnel Is In Situ –

7.10.1. The Working Group considered this issue and have been advised by Planning Officers that: -“The existing voluntary Code requires that polythene should not be on the frames for longer than 6 months of either the 2 consecutive growing seasons followed by a break crop. Where complaint is made to the effect that polythene has been on too long, it will be investigated. If the complaint is about a grower who has submitted details under the terms of the voluntary Code it is likely any breach of planning control can be identified. If the site is one where no information is available it will be more difficult to establish that a breach of planning control has taken place. Normal practice would be for Enforcement Officers to speak to the grower concerned to establish facts. Usually an option would be given to either remove the polytunnel cover within a specified time (28 days is usual) or to submit an application for retention of the polytunnel. Any failure on the part of the grower to remedy the breach of planning control may result in consideration being given to the expediency of instigating enforcement action.”

7.11. Notification To Parish Councils And Neighbours

7.11.1. The Working Group have been advised that when drawing up the original Voluntary Code it was evident from representations that one of the principal concerns was a lack of knowledge of the growers' intention. Although objectors now claim that Parish Councils have objected to the use of polytunnels, the responses received from three Parish Councils affected by polytunnels in the AONB and elsewhere do not raise specific objections. They highlighted issues of concern for the Working Party to consider. Between the confirmation of the Voluntary Code in January 2003 and the commencement of its review early in 2004 representations from individuals concerning the use of polytunnels were limited to a few residents mainly living in the Wye Valley AONB.

7.12. Market value of neighbouring properties –

7.12.1. Concern had been expressed by a number of objectors that the value of properties adjoining polytunnel sites had been adversely effected. The Working Group, while sympathetic with these claims, noted the advice set out at section 6.5.

7.13. Site Management –

7.13.1. The Working Group heard some claims that a few polytunnel sites had been left untidy with plastic left free to blow around in the wind. The Working Group were conscious of the need to distinguish between waste plastic littering the site and plastic being stored on site for use. The Working Group noted the advice set out at section 6.4.2.

7.14. Metal Hoops and Y Frames

7.14.1. The Working Group heard criticism that the metal framework comprising of the metal legs (Y Frames) which are pushed into the ground and the single

hoops which span the legs, were being left in situ and were expressed to be an eyesore. The Working Group have taken into account advice received (see Section 6.6) and considered that this is an area where the Council could reasonably take the view that the metal frameworks should be removed after the growing period and a condition requiring this is included in the revised Code.

7.15. Pilot scheme for New types of Plastics –

7.15.1. The Working Group have heard about the development of two new types of plastic. Ground cover plastic and polytunnel covers are a source of glare and reflection when viewed from elevated locations. The effect of ground cover plastic is to give the appearance of large lakes whereas on polytunnels in bright sunlight considerable glare is produced. The Working Group heard that it is important for the Council to differentiate between the two uses of plastic in that no local authority in this Country is able to control ground cover plastic or fleece. Ground cover plastic is used extensively in the horticultural/ agricultural industry to protect crops and to promote growth/control weeds.

7.15.2. During evidence gathering, growers indicated that experiments had been undertaken with less luminous polythene which, when used on polytunnels, would be less reflective.

7.15.3. The Working Group have been led to understand that the benefit to the grower may be that for soft fruit the polythene uniquely absorbs the light in the infrared spectrum (which is responsible for heat) and in turn significantly reduces the temperature inside the tunnel. Strawberries and raspberries, being woodland species, significantly slow down in photosynthesis when temperatures rise above 25C. In addition the polythene is 90% diffusing, which means it scatters the light so the light gets deeper into the plant canopy resulting in larger fruits. The diffusing nature of the polythene means that it should be less reflective than both glass and clear standard polythene.

7.15.4. As mentioned elsewhere in the report, earlier in the review the Working Group visited strategic points in the County to see the visual effect of polytunnels in use as well as studying polytunnels in use at two farms. More recently the Working Group were invited to see trial areas of new plastics at both Ledbury and Ross-on-Wye. On 7th June, 2004, the Working Group noted the advantages of less reflective plastic and that of black, brown and green ground cover under trial, the brown was less reflective and thought to be less intrusive. The Working Group noted that green coloured plastic under trial as a polytunnel cover had held back the cropping period by up to one week later than that expected from the current clear plastic.

7.15.5. The Working Group appreciated that these were only trial areas and that the results of the tests would probably not be known until the end of the next cropping season (e.g. 2005). They were advised that currently the brown and green plastic were more expensive than black. The Working Group wished to encourage the growers to pursue the use of less visually intrusive plastics and fleeces wherever possible.

7.15.6. In view of the constant advances in polythene technology and growing methods the Working Group suggest to the Cabinet Member (Environment) that any revised Code be further reviewed in 12 months time.

7.16. Consultation with neighbours –

7.16.1. The Working Group heard that in the main growers were consulting both neighbours and the relevant Parish Council. In a number of instances this had

facilitated avenues of discussion locally, which had resulted in amendments being made to proposed sitings to accommodate the wishes of local residents. The Working Group has commended this action. The Working Group debated the general level of consultation undertaken by the applicant (the grower) and considered that the term 'nearby neighbours', being wider than that used in planning terms, was adequate. The Working Group were conscious that a proposed polytunnel site may be near the boundary of one or more Parishes. The Working Group suggest that the Cabinet Member (Environment) consider amending references in the Code from Parish Council to 'relevant Parish Council(s)'.

7.17. Ground Cover and Fleece. –

7.17.1. The Working Group acknowledged that there were areas of the County where a large number of acres were covered by plastic ground cover or fleece. However, as mentioned at section 5.9, the Working Group have been advised that there were no planning or legal grounds to control this aspect and therefore this type of polythene use was outside the terms of reference for the review. However, advancements in polythene technology, discussed at section 7.15 earlier in the report, may help to alleviate the visual effect.

7.18. Other Crops

7.18.1. The Working Group are aware that, on economic grounds, polytunnels are principally used to grow higher value crops that are harvested over a period of time. They have been advised by Planning Services that the Voluntary Code was drawn up primarily to deal with strawberry growing. It is known that in some cases raspberries are grown as are to a lesser extent cherries and other crops. The primary intention of the Voluntary Code as an information gathering and assessment tool was to ensure that a degree of control was exercised, one of the effects of which is that permanent use of polytunnels can not be claimed through long usage. This accords with the growers requirements that polytunnels are moved around a farm as the crop and soil become exhausted and rotation takes place. In effect a particular piece of land is not used continuously for the same purpose. Where a grower wishes to grow continuously in a polytunnel on one piece of land using a method other than growing in the soil then it has always been held by this Council that planning permission is required. This conforms with the findings of the Brinksman Brothers appeal decision. Where crops other than strawberries are to be grown consideration has to be given to the length of time polytunnels would be in place. While each case must be considered on its merits, if it is clear the intention is that the polytunnels will be used on the same site for a considerable number of years then a planning application would be requested.

7.19. Planning information –

7.19.1. The Working Group have noted that should the Code operate for a number of years then the information gathered in the course of it may prove a valuable source of data for this aspect of agriculture.

8. Measuring the Code

8.1. The Working Group have considered various methods of measuring the success or otherwise of the Code. The Working Group considers that the most appropriate means of measuring the success of the Code is by measuring the number of substantiated breaches of the Code per calendar year throughout the County. The Working Group suggests that the Cabinet Member (Environment) monitor complaints concerning polytunnels investigated by Planning Services.

- 8.2. The Working Group also noted that compliance with the Code is voluntary. However, if growers decide not to participate and complete the policy checklist then the policy of the Council should be that they will be considered for a full enforcement inspection. Non co-operation should also be a measure of the success of the Code.
- 8.3. Permanent use of polytunnels fall outside the ambit of the Code. These will require a planning permission and enforcement action if appropriate.

9. Conclusion

- 9.1.1. **The Balance between Economic and Tourism issues** – As described at sections 7.2.12 and 7.2.13 the Working Group considers that insufficiently detailed statistical and factual background has been established to draw any final conclusions regarding the balance between the economic effect of polytunnels on the County and the effect of polytunnels on tourism and where the interests of these two areas differ.
- 9.1.2. Short of a specifically commissioned study, for which there are neither resources or time, the Working Group are unable to draw any final conclusions. The Cabinet Member (Environment) may consider whether further investigation on these points is needed to draw such conclusion.
- 9.1.3. **The Code** - Having considered the body of evidence presented to the Working Group from all parties, including relevant current planning policy, case law and guidance and being conscious of the need to strike a balance between sustaining the agriculture industry whilst protecting the landscape of Herefordshire and the interests of the wider public, the Polytunnel Review Working Group unanimously recommend to the Cabinet Member (Environment) that a revised Voluntary Code of Practice for the Use of Poly tunnels in Herefordshire should operate.
- 9.1.4. The Working Group were of the opinion that when formulating any revised Voluntary Code of Practice To Control the Siting of Poly tunnels in Herefordshire the Cabinet Member (Environment) should give consideration to a number of amendments to the existing Voluntary Code. For ease of comparison a suggested revised Code is attached at Appendix 4. The areas identified by the Working Group are as follows:
- 9.1.4.1. **Title** - The Working Group suggest that the Cabinet Member (Environment) consider changing the name of the Code to 'The Herefordshire Code of Practice for the Temporary Agricultural Use of Poly tunnels'. The Working Group felt that this would reflect that, in the time available, the Code had been comprehensively reviewed and would emphasise the status of the Code, its applicability to agricultural use and the importance the Council attached to it.
- 9.1.4.2. **Introduction** – The Working Group considered that, to save any confusion, reference in the introduction to the Code to the type of polytunnel being referred to be defined in clearer terms.
- 9.1.4.3. **The Code of Practice** – The Working Group debated the level of consultation undertaken by the applicant (the grower) and considered that the term 'nearby neighbours', being wider than that used in planning terms, was adequate. However, it is suggested that the Cabinet Member (Environment) consider amending references to Parish Council to 'relevant Parish Council(s)' on the basis that any proposed polytunnel site may be adjacent to one or more Parishes.

- 9.1.4.4. **Terms of the Code of Practice – 1st bullet point** - Having discussed the issues raised concerning the distance polytunnels were sited from dwellings, the Working Group suggest that the Cabinet Member (Environment) give consideration to increasing the distance (currently 30 metres) from the nearest elevation. The Working Group suggest a distance of 50 metres.
- 9.1.4.5. **Terms of the Code of Practice - 2nd bullet point** - The Working Group considered that 'short term' was ambiguous and should be deleted from the second bullet point referring to mitigation measures.
- 9.1.4.6. **Terms of the Code of Practice - 2nd bullet point** – In view of developments in plastic technology, the Working Group suggest that the following sentence be added at the end of the paragraph 'This may include the use of less reflective coloured ground cover plastic and less luminent polythene (less reflective) on the polytunnels'.
- 9.1.4.7. **Terms of the Code of Practice - New 3rd bullet point** – to reflect the suggested addition to bullet point 2 above in areas outside an AONB, the Working Group suggest the addition of a new 3rd bullet point to read' Outside an area of Outstanding Natural Beauty the grower is encouraged to use less reflective coloured ground cover plastic and less luminent polythene (less reflective) on the polytunnels and to make provision for screening where appropriate.
- 9.1.4.8. **Terms of the Code of Practice - 3rd bullet point** – to clarify the period that polytunnels can be sited in a particular location the Working Group suggest rewording the 3rd bullet point to read 'Siting of polytunnels shall be restricted to 2 years (being a complete season) subject to the polyethylene covering being removed from the frames for a minimum period of 6 months in any calendar year.
- 9.1.4.9. **Polytunnel users will.....- New bullet point** - In an attempt to mitigate some of the concerns expressed regarding stored or waste polythene, the Working Group suggest that a third bullet point with the following wording be added to this section 'Store unused polythene away from public view, waste polythene to be removed from the land and be recycled'.
- 9.1.4.10. **Polytunnel Checklist – Box 5** - it is suggested that check box 5 be amended to seek information relating not only to the area covered by polythene but the height of the polytunnel, the method of irrigation and any other services connected e.g. electricity.
- 9.1.4.11. **Polytunnel Checklist – Box 7** – it is suggested that to clarify the removal of equipment from the site checklist box 7 be worded: 7a) Approximate date of removal of metal hoops, fixings and frames from land. To reflect the suggested addition of a new bullet point concerning stored or waste polythene the Working Group suggest that the following wording be added: 7b. Written confirmation that the land has been cleared shall be sent to Planning Services within one month of 7a.
- 9.1.4.12. **Polytunnel Checklist – Box 10** - The Working Group consider that the response box for item 10 be made larger to encourage applicants to enter fuller details concerning landscape impact.

- 9.1.4.13. **Landscape Impact Statements** - The Working Group suggest that references in the Code to the submission of a landscape impact statement be reworded to require the submission of a landscape impact statement. The Working Group suggest the following wording for checklist box 10 'Within and adjacent to an AONB submission of a landscape impact statement to include a map showing where polytunnels can be viewed from and proposed mitigation measures e.g. leaving hedges untrimmed, erecting grey/green mesh wind breaks, tree planting.'
- 9.1.4.14. **Polytunnel Checklist – New checklist box** - It is suggested that in accordance with the Data Protection Act 1998 a new checklist box be added concerning the use of the information provided by the checklist.
- 9.1.5. **Further review of the Code**- It is recommended that in view of the constant advances in polythene technology and growing methods the Cabinet Member (Environment) should consider further reviewing the Code in 12 months time.
- 9.1.6. **Measuring the Code** – it is suggested that the success or otherwise of the Code be measured by monitoring the complaints investigated by Planning Services.
- 9.1.7. **Amendment to the Development Plan** – In accordance with the Review Scoping Statement members of the Working Group were advised that the Revised Deposit Draft of Herefordshire Unitary Development Plan was now published with opportunity to comment only on changes that have been made to the Deposit Draft Written Statement. During the course of consideration of UDP policies by Members minor changes have been made to Policy LA1. The period for comment ends on 24th June 2004. Policy LA1 gives priority 'to the protection and enhancement of the natural beauty and amenity' of, in the context of this review the Wye Valley AONB. Only where it becomes evident that a particular growing operation requires planning permission would this policy form the basis of guidance and decision-making.

10. Acknowledgements

- 10.1. The Polytunnel Review Working Group is very grateful to the public, growers and other organisations who submitted their views or comments, the witnesses who gave evidence, the local press for keeping the public informed, and the officers who supported the process.

Appendixes

1. Full Scoping Statement for the review.
2. The current Voluntary Code of Practice to Control the use of Poly tunnels in Herefordshire.
3. Witnesses interviewed by the Polytunnel Review Working Group.
4. Recommended Revised Code - for ease of comparison.
5. Glossary.

REVIEW:	Environment Scrutiny Committee	
Committee:	Polytunnel review working group	Chair: Councillor TW Hunt
Lead support officer:	J Barrett	

1.1. SCOPING

Terms of Reference

- To review the voluntary Code of practice for regulating the extensive use of polytunnels in Herefordshire
- To consider the appropriateness of the Code and associated processes in the light of relevant current planning policy, case law and guidance
- To consider how best to strike a balance between sustaining a key sector of the agriculture industry whilst protecting the landscape of Herefordshire and the interests of the wider community.
- Following the review to advise the Cabinet Member (Environment) on the best framework to put in place to regulate extensive polytunnel use in Herefordshire and whether the Development Plan requires amendment

Desired outcomes

- For the current voluntary Code to have been fully examined in public in an open and transparent way.
- For Members of the working group to consider a range of options on the future form of any voluntary Code.
- For there to be cooperation with the growers on the continuation of or revision to the Voluntary Code.

Key questions

- Consider what means of measurement can be used to judge the success or otherwise of the Voluntary Code.
- By examination of complaints identify the elements of concern raised by objectors.
- To consider what options are available to the Council to control the use of Polytunnels in the County.
- To enquire from growers their views on the working of the Voluntary Code and for its future.
- To consider the views of the public and interested parties on the working of the Voluntary Code and for its future.

Timetable	
<i>Activity</i>	<i>Timescale</i>
Agree scope	February 2004
Assess currently available information	March 2004
Undertake publicity of the review, set option	March 2004
Invite representative witnesses	March 2004
Undertake representative site visit	March 2004
Interim report	2 nd April 2004

**VOLUNTARY CODE OF PRACTICE
TO CONTROL THE SITING OF POLYTUNNELS IN HEREFORDSHIRE**

1. Introduction

This Code of Practice is intended to apply to the use of 'Spanish' type polytunnels only which consist of temporary frames, covered with polythene and produce grown in the existing soil. In addition, the Code of Practice is not intended to have effect where, in the opinion of Herefordshire Council as Local Planning Authority (LPA) on the facts available, planning permission is required.

2. The Code of Practice

The code requires a grower to provide the LPA with information on a Polytunnel Checklist. This information will be used to determine if planning permission is required.

If the criteria is met, (planning permission is not required), the grower undertakes to provide notice to the Council confirming that notification has been given to the parish Council and nearby neighbours of the intention to erect polytunnels.

3. Terms of the Code of Practice

- Siting of polytunnels will be 30 metres from the nearest elevation of any dwelling subject to variation of that distance by agreement with that neighbour.
- Within an Area of Outstanding Natural Beauty, the grower will submit a landscape impact statement accompanied by short-term mitigation measures.
- Polythene covering of the frames shall be restricted to a time period necessary to meet customer quality requirements subject to a maximum period of 6 months in any calendar year.
- Polytunnel framework shall be removed from the land in accordance with the statement on the Polytunnel Checklist.
- Notice will be given by the grower to the Council confirming written or verbal notice has been given to the Parish Council and nearby neighbours.

Polytunnel users will use all reasonable endeavours to -

- Avoid disturbance to nearby residents at unsociable hours.
- By best management practice avoid noise nuisance to nearby residents from unsecured polythene, pumps or other activity sources.

Compliance with the terms of this code will bring benefits to growers, residents who live near to polytunnel sites and Herefordshire Council, in terms of information and notice.

Herefordshire Council as Local Planning Authority will regard compliance with terms of the Voluntary Code of Practice as a material consideration when investigating any complaint or consideration as to the expediency of instigating enforcement action.

POLYTUNNEL CHECKLIST



The purpose of this checklist is to provide Planning Services with information on which to advise a grower on the need for planning permission. If it is clear from the information provided by the grower that planning permission is required the voluntary code of practice does not apply. A separate checklist form should be completed for each location where a grower wishes to erect polytunnels.

Name and address of applicant	Site of Polytunnel (if different)
Full name	Address
Address
.....
..... Postcode
Tel. No. Postcode

1. Approximate date erection of polytunnels commencing:	
2. Overall size of farm:	
3. Type of crop:	
4. Method of growing – in ground, grow bag on the ground or off-ground:	
5. Area covered by polythene:	
6. Expected period of time polythene to be in position	
7. Approximate date of removal of metal frames from land:	
8. Method of disposal of waste polythene:	
9. Location plan enclosed:	Yes / No
10. Landscape impact statement – i.e. map showing where polytunnels can be viewed from and proposed mitigation measures. E.g. leaving hedges untrimmed, erecting grey/green mesh wind breaks, tree planting.	Yes/No

Signed(Applicant/Agent)
Date

Notice may be sent to the Local Planning Authority by Fax: 01432 261970, or to:
Planning Services, PO Box 230, Blueschool House, Blueschool Street, Hereford, HR1 2ZB.

NOTICE TO HEREFORDSHIRE COUNCIL

From:	
If you have any comments to make or wish to discuss my proposal please telephone:	

Prior notice of the proposed erection of polytunnels at:	
Expected date of erection:	
Expected date of removal:	
I confirm I have notified the Parish Council and near neighbours	Signed..... Dated.....

Please send this notice to Planning Services, Herefordshire Council, Blueschool House, Blueschool Street, Hereford, HR1 2ZB, or by fax: 01432 261970.

APPENDIX 3

WITNESSES INTERVIEWED BY THE POLYTUNNEL REVIEW WORKING GROUP

OBJECTORS

Mr M. Don	Writer, TV presenter and President of the Arrow Valley Residents Association.
Mr. P. Huyton	Self-employed.
Mr E. Kelly	Artist.
Mrs. S. Kelly	Footpath Officer fro Hentland
Mr. H. Morgan	Management Consultant
Mrs. V. Morgan	Retired Teacher.
Mrs V. O'Neil	Professional Cook.
Mrs D. Penfold	Retired.
Mr. C. Wooldridge	University Teacher and representative of Tewkesbury Road Action on Polytunnels (TRAP).

SUPPORTERS

Mr. A. Davison	Fruit Farmer and manufacturer (Haygrove Tunnels).
Mr E. Drummond	Farmer
Mr. G. Moor	Fruit Agronomist and advisor to Haygrove Tunnels.
Mr. D. Price	Country Land and Business Association (CLA) and representing National Farmers Union (NFU).
Mr. A. Snell	Fruit Farmer. Chairman of West Midlands Horticulture Board.
Mr. S. Stubbins	Soft Fruit Consultant (Retired Marks & Spencer Senior Executive)

ORGANISATIONS

Mrs Bobbie Heavens	Association for the Promotion of Herefordshire Ltd. (APH).
Mr Nash	Campaign to Protect Rural England (CPRE)

HEREFORDSHIRE COUNCIL

Mr Jonathan. Barrett	Head of Planning Services – Herefordshire Council
Mr Bill Bloxsome	Chief Conservation Officer – Herefordshire Council.
Miss. Lisette Davies	Tourism Development Officer – Herefordshire Council.
Dr. David Nicholson	Chief Forward Planning Officer – Herefordshire Council.
Mr. Kevin. O’Keefe	Legal Practice Manager – Herefordshire Council
Mr. Alan. Poole	Chief Development Control Officer – Herefordshire Council
Mrs Clare Wichbold MBE	Regeneration Co-ordinator – Herefordshire Council.

~~**VOLUNTARY CODE OF PRACTICE
TO CONTROL THE SITING OF POLYTUNNELS IN HEREFORDSHIRE**~~

**THE HEREFORDSHIRE CODE OF PRACTICE FOR THE TEMPORARY AGRICULTURAL
USE OF POLYTUNNELS**

1. Introduction

This Code of Practice is intended to apply to the use of ‘Spanish’ type ~~temporary~~ polytunnels ~~only~~ which consist of ~~temporary~~ metal frames, covered with polythene and ~~where~~ produce crops are grown in the existing soil. In addition, the Code of Practice is not intended to have effect where, in the opinion of Herefordshire Council as Local Planning Authority (LPA) on the facts available, that planning permission is required.

2. The Code of Practice

The code requires a grower to provide the LPA with information on a Polytunnel Checklist. This information will be used to determine if planning permission is required.

If the criteria is met, (planning permission is not required), the grower undertakes to provide notice to the Council confirming that notification has been given to the ~~parish~~ relevant Parish Council(s) and nearby neighbours of the intention to erect polytunnels.

3. Terms of the Code of Practice

- Siting of polytunnels will be ~~30~~ 50 metres from the nearest elevation of any dwelling subject to variation of that distance by agreement with that neighbour.
- Within an Area of Outstanding Natural Beauty, the grower will submit a landscape impact statement accompanied by ~~short term~~ mitigation measures. This may include the use of less reflective coloured ground cover plastic and less luminent polythene (less reflective) on the polytunnels.
 - Outside an area of Outstanding Natural Beauty the grower is encouraged to use less reflective coloured ground cover plastic and less luminent polythene (less reflective) on the polytunnels and to make provision for screening where appropriate.
 - Siting of polytunnels shall be restricted to 2 years (being a complete season) subject to the polyethylene covering being removed from the frames for a minimum period of 6 months in any calendar year.
- ~~Polythene covering of the frames shall be restricted to a time period necessary to meet customer quality requirements subject to a maximum period of 6 months in any calendar year.~~
- Polytunnel framework shall be removed from the land in accordance with the statement on the Polytunnel Checklist.
- Notice will be given by the grower to the Council confirming written or verbal notice has been given to the Parish Council(s) and nearby neighbours.

Polytunnel users will use all reasonable endeavours to -

- Avoid disturbance to nearby residents at unsociable hours.
- By best management practice avoid noise nuisance to nearby residents from unsecured polythene, pumps or other activity sources.
- Store unused polythene away from public view, waste polythene to be removed from the land and be recycled.

Compliance with the terms of this code will bring benefits to growers, residents who live near to polytunnel sites and Herefordshire Council, in terms of information and notice.

Herefordshire Council as Local Planning Authority will regard compliance with terms of the ~~Voluntary~~ Herefordshire Code of Practice as a material consideration when investigating any complaint or consideration as to the expediency of instigating enforcement action.

POLYTUNNEL CHECKLIST



The purpose of this checklist is to provide Planning Services with information on which to advise a grower on the need for planning permission. If it is clear from the information provided by the grower that planning permission is required the voluntary code of practice does not apply. A separate checklist form should be completed for each location where a grower wishes to erect polytunnels.

Name and address of applicant	Site of Polytunnel (if different)
Full name	Address
Address
.....
..... Postcode
Tel. No. Postcode

1. Approximate date erection of polytunnels commencing:	
2. Overall size of farm:	
3. Type of crop:	
4. Method of growing – in ground, grow bag on the ground or off-ground:	
5a). Area covered by polythene c) method of irrigation <u>eg electricity.</u>	b) height of polytunnel d) any other services connected eg electricity
6. Expected period of time polythene to be in position	
7a. Approximate date of removal of metal hoops, fixings and frames from land: 7b. <u>Written confirmation that land has been cleared shall be sent to Planning Services within one month of 7a.</u>	
8. Method of disposal of waste polythene:	
9. Location plan enclosed:	Yes / No
10. <u>Landscape impact statement – i.e. Within and adjacent to an AONB submission of a landscape impact statement to include a map showing where polytunnels can be viewed from and proposed mitigation measures. E.g. leaving hedges untrimmed, erecting grey/green mesh wind breaks, tree planting.</u>	Yes/No
<u>Do you wish the information provided to remain confidential</u>	Yes / No

Signed(Applicant/Agent)
Date

Notice may be sent to the Local Planning Authority by Fax: 01432 261970, or to: Planning Services, PO Box 230, Blueschool House, Blueschool Street, Hereford, HR1 2ZB.

NOTICE TO HEREFORDSHIRE COUNCIL

From:	
If you have any comments to make or wish to discuss my proposal please telephone:	

Prior notice of the proposed erection of polytunnels at:	
Expected date of erection:	
Expected date of removal:	
I confirm I have notified the <u>relevant</u> Parish Council(<u>s</u>) and near neighbours	Signed: Dated:

Please send this notice to Planning Services, Herefordshire Council, Blueschool House, Blueschool Street, Hereford, HR1 2ZB, or by fax: 01432 261970.

GLOSSARY

Polytunnels

French Originally the French polytunnel was created as a temporary growing environment for primarily soft fruit. Usually bespoke and single bay.

Spanish Similar to the French but multiple bay, the 'Y' frame anchors supporting two frames at once. The Spanish polytunnels also allows ventilation by means of adjusting the plastic outer covering.

Originally open ended, these are now capable of being enclosed at the ends.

These are the polytunnels most commonly used.

Garden Single (usually short) bayed units of smaller dimensions and designed for the garden/smallholding.

AONB (Area of Outstanding Natural Beauty)

Formerly such areas were created under the provisions of S87 National Parks and Access to the Countryside Act 1949 which stated:-

[The Countryside Agency] [or as the case may be the Council] may by order made as respects any area in England or Wales, not being a National Park, which appears to them to be of such outstanding natural beauty that it is desirable that the provisions of this act relating to such areas should apply thereto ...”.

This designation and any future designations are preserved by S87 Countryside and Rights of Way Act 2000. This preserves the same wording but also inserts the phrase “the Agency may, for the purpose of conserving and enhancing the national beauty of the area, by order designate the area for the purposes of this part ...”. No similar wording existed in the 1949 Act.

The Wye Valley AONB was designated on 24th February 1971.

DEFRA

The Department of the Environment Food and Rural Affairs was created in June 2001 to “bring together all aspects of the Environment, Rural matters, farming and food production”.

Landscape character assessment

A non-statutory term:-

“A tool for identifying the features that give a locality its “sense of place” and what makes it different from its neighbouring areas”. An ongoing rolling programme of mapping contributing to the “character of England” map.

It comprises two stages, characterisation and then judgements in relation to land management decisions. See Countryside Agency website with published guidance, also the Countryside Character Network website.

Herefordshire characterisation was begun prior to 1998. It was completed approximately 2 years ago and the supplementary planning guidance produced to support the characterisation is currently programmed with the deposit draft Unitary Development Plan to reflect uniformity of wording.

Paragraph 2.15 of the PPG7 specifically refers to these assessments.

Landscape impact assessments

Are a standard tool to assess the impact of any land use change in the countryside. The involvement of the Council's Landscape section is usual during the formulation process of an L I A. Any improvements or requirements are similarly inspected for compliance.

Unitary Development Plan

Guiding document to 2011 currently in preparation dealing with land use in the County.