

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

PROGRAMME AREA RESPONSIBILITY: ENVIRONMENT

CABINET

22ND MARCH, 2007

Wards Affected

Countywide

Purpose

To report the findings of the Poly tunnel Review Working Group.

Key Decision

This is a key decision because it is likely to be significant in terms of its effect on communities living or working in Herefordshire in an area comprising one or more wards. It was not included in the Forward Plan however inclusion in the agenda gives the required notice in accordance with Section 15 of the Local Authorities (Executive Arrangements) (Access to Information) Regulations 2000.

Background

1. In accordance with the decision of Cabinet on 14th October 2004, that the Poly tunnel Voluntary Code be reviewed every two years, the Poly tunnel Review Working Group met in March and May 2006. It was apparent that a planning law case relating to Enforcement Notices served by Waverley Borough Council in Surrey, might have a strong bearing on the review of the code and therefore on the legal position. The work of the Group was suspended pending the outcome of the Waverley case.
2. The Waverley case related to Poly tunnels erected at Tuesley Farm, Waverley, Near Godalming in Surrey. Enforcement Notices had been served by the District Council in respect of those Poly tunnels. The grower had challenged the notices at appeal and had lost. The grower had subsequently fought to overturn the Planning Inspectors decision by referring the case to the High Court. The matter ultimately came before Mr Justice Sullivan who handed down judgment on 15th December, 2006. A transcript of the judgment came into the Councils position in February 2007.
3. The Review Group met on 1st March 2007 and received advice from the Legal Practice Manager and the Development Control Manager. A summary setting out the basis of that advice is attached as Appendix 1.
4. The Review Group considered the advice and reported to the Environment Scrutiny Committee, which received the report on 12th March 2007.

Recommendations

THAT

Further information on the subject of this report is available from
K. O'Keefe, Legal Practice Manager, on 01432 260005

- (a) all *new* polytunnel developments within the County (be they for soil grown crops or table top growing or otherwise howsoever) be treated as development requiring planning consent. The usual application form will need to be completed in those circumstances;
- (b) enforcement proceedings be continued and/or initiated in accordance with the priorities below:
 - (i) Enforcement proceedings to be continued in respect of those sites where notices have already been served and/or are in preparation
 - (ii) Enforcement proceedings to be initiated during the growing season of 2007 in all cases where polytunnels are already known, or are suspected, to be outside the Code of Practice, there is a threat to acknowledged planning interests, and are approaching four years in situ
 - (iii) Enforcement proceedings to be initiated after the end of growing season 2007 in all other cases where planning applications have not, by then, been submitted and there is a threat to acknowledge planning interest; and
- (c) the Executives response be reported to the Environment Scrutiny Committee in due course.

Reasons

It is important that advice to the Council reflects the legal position whether established through statute sub-legislation or case law in the discharge of its functions. The Waverley case sets binding legal precedent, which must be followed, if the Council is to avoid the risk of challenge.

Alternative Options

As an alternative, Cabinet could choose not to implement the recommendations.

Risk Management

Having regard to the clear nature of the judgment in the Waverley Case, it is considered that the Council would risk challenge by judicial review and/or referral to the Local Government Ombudsman if it failed to take account of the High Court Judgment.

Consultees

The Director of the Environment, the Head of Planning Services, the Legal Practice Manager and the Development Control Manager.

Background Papers

None identified.