

POLYTUNNEL DEVELOPMENTS IN HEREFORDSHIRE

PORTFOLIO RESPONSIBILITY: ENVIRONMENT AND STRATEGIC HOUSING

CABINET

13 DECEMBER 2007

Wards Affected

County-wide

Purpose

To seek amendment of a Cabinet decision made on 22nd March 2007 where it was decided that all new polytunnel developments within the County be treated as development requiring planning permission “*See Appendix 1*”.

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.

Recommendation

That the above decision be amended in accordance with Counsel’s Advice as noted in “Reasons and Chronology” below. The decision should be amended in the following terms:-

- (i) Paragraphs (a) and (b) shall be deleted.
- (ii) New paragraphs (a) and (b) will be substituted:-
 - (a) Whether or not planning permission is required for new or existing polytunnel developments within the County will be determined on the facts of each case.
 - (b) Whether or not enforcement proceedings will be commenced or continued will also be determined on the facts of each case.

For avoidance of doubt, paragraphs (c) and (d) in the decision shall be retained.

Further information on the subject of this report is available from
Kevin O’Keefe, Legal Practice Manager on (01432) 260005

Reasons and Chronology

1. On 22nd March 2007 Cabinet made a decision as outlined in paragraph 1 above. As a result Solicitors representing a local grower alerted the Council of their intention to lodge Judicial Review proceedings in the High Court. Counsel's opinion was sought. His advice was that the question of whether or not permission is required is to be determined on the facts of each case.
2. The grower's Solicitors were informed that this policy would be followed in practice. A letter was sent to them dated 20th June 2007 to this effect. On that date they lodged a claim for Judicial Review. On 12th October 2007 the High Court agreed to allow a short period of consideration and on 15th November 2007 a Consent Order was executed wherein the grower withdrew his claim for Judicial Review.

Financial Implications

Should the decision not be amended there is a strong probability that further Judicial Review and other civil proceedings will be taken against the Council resulting in both adverse damages and cost awards being made.

Risk Management

1. Perceived risk: Inevitable result of prompt and expensive litigation if above course not followed.
2. Probable result: Adverse publicity as well as considerable expense.
3. Action to prevent risk: Amend Cabinet decision as specified above.

Alternative Options

There are no Alternative Options.

Consultees

None

Appendices

Appendix 1 – Cabinet Decision – 22nd March 2007

Background Papers

None identified.