

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

Report By: Head of Planning Services

Wards Affected

County-wide

Purpose

1. To consider whether revisions are needed to the code of practice in the light of experience through the growing season of 2005.

Background

2. The Environment Scrutiny Committee last considered this matter at their meeting on 23rd June 2004. An extensive review by the Poly tunnels Review Working Group was considered and, in the light of its findings, an updated Code of Practice was forwarded to the Cabinet Member (Environment) for approval. Cabinet on 14th October, 2004 accepted the findings and, subject to slight amendment, agreed to adopt the revised Code of Practice. Since that time the Code of Practice has been in operation as non-statutory planning guidance.
3. The decision by Cabinet to approve the Code of Practice provided for it to be reviewed in two years time, i.e. in 2006. This report is, therefore, made at an interim stage with the intention of reviewing progress to date along with a brief review of related issues.
4. The agreed Code of Practice is included at **Appendix 1** of this report.

2004/2005

Planning Applications

5. Current practice in Herefordshire is to require planning applications where polytunnels are intended to remain in place for over two years or the method of cultivation involves plants being grown in bags or on raised beds i.e. they are not being grown in the ground. There have been 8 planning applications submitted for Poly tunnels in the last 12 months. They are:

Planning Applications for Polytunnels 2004/05			
Application	Location	Brief Description	Outcome
Southern Area Committee			
SW05/2351/F	"Asparagus Patch", Blakemere	1 polytunnel	Approved 10/08/05
Central Area Committee			
CW04/4212/F	Brick House, Bush Bank	2.59 ha of polytunnels	Approved 09/03/05
CW05/0698/F	Marden	Polytunnels for "Raised Bed" cultivation	Withdrawn pending EIA
CW05/2947/F	Brick House, Bush Bank	Renewal permission in respect of two polytunnels (ref CW05/0698)	(undetermined)
Northern Area Committee			
NW04/3669/F	Credale Nursery, Upper Hill, Leominster	2 polytunnels	Approved 22/04/05
NW04/4304/F	Moreton View Nursery, Gate Burley	Polytunnel nursery	Approved 02/02/05
NE05/0223/F	Baddy Marsh Farm, Lower Eggleton, Ledbury	27.5m by 16m polytunnel	Approved 05/01/05
NE05/0283/F	Mathon Road, Colwall	Replace polytunnel with glasshouse	Approved 17/03/05

6. The principal issue encountered in the matters referred to above has been the polytunnels erected at Marden which was the subject of a retrospective application for planning permission. The application was withdrawn when it became clear that the suspected presence of protected species on the site meant that an Environmental Impact Assessment (EIA) was required before determination. The case is awaiting the submission of an EIA, which will now have to wait until early spring 2006 due to the

seasonal nature of the species to be studied. Meanwhile it is anticipated that the "plastic" covering of the polytunnels will be removed at the end of the 2005 growing season in any event. The Council's solicitors consider that it would not be expedient to take enforcement action in respect of these polytunnels pending the anticipated re-submission of the application for planning permission supported by an appropriate EIA.

Notifications in Accordance with the Code of Practice

7. Most of the polytunnels in the County have been the subject of notifications in accordance with the Code of Practice. These are cases where the intention is to move the polytunnels after a maximum of two years and the crops are grown in the ground. Since the Environment Scrutiny Committee in June 2004 there have been 12 notifications.

Notifications for Polytunnels since June 2004			
Date received	Location	Name	Company
23/09/2004	Wickton Court, Stoke Prior Nr Leominster, HR1 3ET	John Davies/Peter Gwynne Brook Farm, Marden, Hereford, HR1 3ET	S & A Soft Fruits Ltd Brook Farm, Marden, Hereford, HR1 3ET
24/01/2005	Homme Farm, Ross on Wye, Hereford, HR9 7TF	Eric Drummond The Homme, Hom, Green, Ross on Wye, HR9 7TF	Eric Drummond
28/2/2005	Pencoyd Court Farm, Harewood End, Hereford, HR2 8JY	AJ & CI Snell Pencoyd Court Farm, Harewood End, Hereford, HR2 8JY	
27/01/2005	Lower Hope Livestock and Fruit Ltd, Ullingswick, HR1 3JF	S.D Wells Lower Hope Livestock and Fruit Ltd, Ullingswick, HR1 3JF	S.D Wells
31/3/2005	Haygrove Farm, Falcon Lane, Ledbury, HR8 2PY	Mr A Davison Redbank, Ledbury, Herefordshire, HR8 2JL	Haygrove Ltd Redbank, Ledbury, Herefordshire, HR8 2JL
18/4/2005	Biddlestone Orchards, Llangarron, Ross on Wye, HR9 6NT	R.L Oakeley Biddlestone Orchards, Llangrove, HR9 6NT	Biddlestone orchard
29/3/2005	Drakeley Farm, Marden, Hereford	John Davies/Peter Gwynne Brook Farm, Marden, Hereford, HR1 3ET	S & A Produce Ltd Brook Farm, Marden, Hereford, HR1 3ET

Further information on the subject of this report is available from P.J. Yates,
Development Control Manager on (01432) 261782

28/4/2005	Brick House Farm, Canon Pyon, Hereford, HR4 8PH	Mr V Powell Brick House Farm, Canon Pyon, Hereford, HR4 8PH	
28/4/2005	Pennoxstone Court Farm, Kings Caple, HR1 4TX	Mr Neil Cockburn Pennoxstone Court Farm, Kings Caple, HR1 4TX	
06/06/2005	Wharton Court, Leominster, HR6 0NX	S&A Soft Fruits Ltd, Brook Farm, Marden, Hereford, HR1 3ET	
02/08/2005	Front Pump Field, Lower Hope, Ullingswick, Hereford, HR1 3JF	Lower Hope Fruit Ltd, Lower Hope Estate, Ullingswick, Hereford	
11/08/2005	Wharton Court, Leominster, HR6 0NX	S&A Soft Fruits Ltd, Brook Farm, Marden, Hereford, HR1 3ET	

8. In accordance with the code of practice all of the notifications above have been submitted on the basis of the polytunnels being present on the same site for no more than two years.
9. In September 2005 the polytunnels listed above covered a total of approximately 183 hectares (approximately 420 acres). It should be noted however that, in the nature of these polytunnels, in many cases they are in different locations from previous years.

Enforcement Issues

10. There is currently one Enforcement Case outstanding in the County at Pennoxstone Court. In this case the same farmholding has several areas under polytunnels with Code of Practice notifications and one area which is under polytunnels without notification. The landowner has proved reluctant to submit any application and enforcement proceedings may yet prove necessary to create a "Deemed Application" for the Council to consider.
11. There is, of course, the outstanding enforcement notice at Brierley Court which was the subject of a public local inquiry in July 2005 and concerned both caravans and polytunnels. That case has been called-in by the Secretary of State and until the decision is known no further action is appropriate

Case law

12. In addition to the Brierley Court case there is also an outstanding case in Waverley Borough Council where an enforcement notice concerning caravans and polytunnels is currently the subject of a public local inquiry. The Inspector's decision, when it is made, may help to establish the planning basis for control of polytunnels.

NFU Code of Practice

13. Members may be interested to note that the National Farmers' Union has, along with British Summer Fruits Ltd., published its own Code of Practice. The principal differences between their Code of Practice and the Herefordshire Code are:
- The NFU code recommends a minimum distance of 30 metres between polytunnels and the nearest dwelling; the Herefordshire Code specifies 50 metres
 - The NFU Code does not recommend a maximum period for polytunnels to remain in one location (assuming that they are moved frequently anyway)
 - The NFU code includes no provision for consulting local parishes or other interested parties before erecting polytunnels.

Countryside Agency.

14. The Countryside Agency has commissioned a consultancy, Entec, to investigate the issue of polytunnel development. The intention is to help the Countryside Agency develop its own policy stance on this type of development. They are currently in the process of analysing responses from their own selection of consultees, including local planning authorities, but have yet to publish any results.

Comment

15. Polytunnels remain a controversial issue due to their large scale and the non-statutory basis of the control the Council seeks to exercise through the Code of Practice. Case law may yet provide an improved definition of development which would either bring polytunnels fully within planning control or exclude them altogether. In the meantime the legal basis of control has remained unchanged in the past 12 months.
16. Demand to erect polytunnels will continue for the foreseeable future as they are now an essential part of agricultural production for "summer fruits".
17. In the absence of a definitive legal definition for when polytunnels come within planning control the Code of Practice is the best available means of control. Interestingly, as part of the new development plan system (i.e. the Local Development Framework), pre-application consultation can be required through the forthcoming Statement of Community Involvement. In this regard the current Code of Practice accords with the principles of the new planning system.
18. NFU/BSF Code of Practice has been developed for the benefit of suppliers and their clients and should not be regarded as superior to the Herefordshire Code. In particular it does not require any pre-consultation and would permit polytunnels as close as 30 metres from the nearest dwelling whereas the Herefordshire Code specifies 50 metres.
19. It is important to bear in mind that the principal impact, in planning terms, of polytunnels is their effect on the landscape. The Code of Practice seeks to preserve the landscape in the long term by requiring the plastic covering to be removed in winter and permitting the polytunnels themselves to remain in use on the same site for only two years. This is a pragmatic approach which allows for agricultural production to take place whilst preserving the landscape in the long term.

RECOMMENDATION

THAT the Committee;

- a) note the experience of the past 12 months of operation of the Code of Practice;**
- b) require a further report in the event of any significant change in case law which would change the basis of the current Code of Practice**
- c) recommend to the Cabinet Member (Environment) that the pre-consultation requirements of the Code of Practice be incorporated into the draft Statement of Community Involvement currently in preparation**
- d) recommend to the Cabinet Member (Environment) that the Code of Practice should continue in operation subject to a full review in October 2006**
- e) determines any further submission it may wish to make to the Cabinet Member (Environment).**

BACKGROUND PAPERS

- None identified.