

Questions (or comments) received for Environment Scrutiny Committee on 24th October, 2005.

<b>Agenda Item 6 (Biodiversity)</b>	
1	<p>H M Morgan Wye Valley AONB &amp; Walford PC</p> <p>English Nature, another Statutory Consultee, was only told of this application by us just before the planning meeting at which permission was given for 66 caravans. They then objected on environmental grounds as affecting AGLV.AONB, SSSI &amp; SAC designated areas. How then can your committee reconcile this planning permission with your 'Biodiversity &amp; Planning Advice (See Agenda Page 9, Para 13.2) This requires that matters to be monitored include:- 'Changes in areas designated for their historic environmental value including sites of international, national, regional, sub regional, and local significance.'?</p> <p><i>The planning application was for a scheme of 66 caravans at Coleraine Buildings, Coughton, Ross-on-Wye, planning reference DCSE2005/0042/F.</i></p> <p><i>The planning application was not referred to English Nature because the development site is over 4 km from the nearest designated area of concern for them - i.e. the River Wye. In the event the letter from English Nature was received in time to be reported verbally to the Southern Area Planning Sub-Committee but, upon close reading of the letter, it can be seen that their principal cause for concern was the impact of drainage from the development site and their principal recommendation was that the Council should liaise closely with the Environment Agency on this matter. In fact the application had been the subject of extensive consultation with the Environment Agency on this very topic and, indeed, still remains undetermined pending final resolution of the drainage issues. Consequently, the process used has protected and continues to protect the interests referred to in the Biodiversity and Planning Advice.</i></p>
<b>Agenda Item 7 (Polytunnels)</b>	
2	<p>H M Morgan Wye Valley AONB &amp; Walford PC</p> <p>The Voluntary Code of Practice for the use of Polytunnels in Herefordshire was much discussed at an open public meeting at Sellack on 19<sup>th</sup> Sept 2005,organised by HWVAS &amp; which I chaired. Unanswered questions concerned:-</p> <ol style="list-style-type: none"> <li>1. The 'unlawfulness' of this code, as repeatedly stated by H.C.'s own Barrister recently at the Brierley hearing? <p><i>Counsel for the Council said that it may have been the case that the earlier version of the Code was unlawful as there was no reference to the maximum of 2 years. This is now not the case. The Council's own legal advice remains that the Code is a lawful response to current circumstances a point which is reinforced by the fact that it's operation has been scrutinised on two occasions by the local Government Ombudsman with no adverse comment. No individual or group has yet seen fit to challenge the legality of the operation of the Code through the Courts.</i></p> </li> <li>2. What happens to polytunnels after 4 years in an AONB (or elsewhere)? <p><i>After two years of operation under the terms of the Code a grower will be required to remove any polytunnels or seek planning permission for their siting for a longer period. In the event that a grower has evidence that polytunnels have been in use continuously for a period in excess of four years they will be at liberty to submit an application for a Certificate of Lawfulness of Existing Use or Development.</i></p> </li> <li>3. When will Herefordshire benefit from proper planning law as applies in Gloucestershire &amp; elsewhere?</li> </ol>

	<p><i>As far as the Council is concerned planning laws are properly enforced. The Council is aware that Gloucestershire County Council takes a different view on polytunnels. The operation of the Code will be reviewed in the event of any new case law arising or changes in national planning regulation or policy and in any event on a two yearly basis.</i></p> <p>4. Why does this unlawful code allow 2 years polytunnel permanence when the leading case stipulates only 1 season – certainly less than a year?</p> <p><i>There is no case directly applicable to the issues involved but the Council is fully aware of cases that have relevance to the issue. These cases have pointed out that each case rests on its own circumstances. The Code applies in circumstances where the use of polytunnels is considered not to require planning permission. The two year term for the temporary use of polytunnels is provided for in the Code</i></p> <p>5. When will polytunnels be removed/restricted from/in the AONB?</p> <p><i>The use of polytunnels in all areas is governed by national policy and guidance and the Code. It is the Council's view that their use in any area including an AONB in compliance with the Code is lawful.</i></p>
3	<p>H M Morgan, Wye Valley AONB &amp; Walford Parish Council</p> <p>Within Code Appendix 1, whilst polytunnel users are exhorted to 'use all reasonable endeavours' inter alia, to avoid noise etc, there is no mention at all of the use &amp; spraying of toxic chemicals. As you may know, past fruit residue levels are now causing considerable concern as are the effects from drift, on neighbours. Pending the resumption of proper lawful controls, will your committee urgently consider this as a Code control priority?</p> <p><i>The Polytunnel Review Working Group had evidence presented to it that pesticide use in polytunnels is less than in the open. The use of polytunnels allows for the reduction in the use of pesticides and their containment. The use of pesticides and herbicides is a routine farming activity and not one regulated by either the Council or by planning legislation.</i></p>
4	<p>Mr A. Green, Ivington</p> <p>Polytunnels are spreading throughout Herefordshire – the southern approach to Leominster is white polythene. The Council can proactively act now to control their spread in the landscape by restricting their location and so minimise their environmental impact or seek reactively to try to undo what harm has taken place.</p> <p><i>Comment only</i></p>
5	<p>Mr A. Green, Ivington</p> <p>County property owners in rural areas purchase their homes for their rural situation. Polytunnels are outside the common definition of traditional agricultural landscape. To tolerate the uncontrolled spread of polytunnels in Herefordshire, even in the short-term, is to dilute the very essence of Herefordshire</p> <p><i>Comment only</i></p>
6	<p>Mr A. Green, Ivington</p> <p>S&amp;A Davies at Brierley Court have not removed their 2003 polytunnels despite the passing of two years. These structures were the subject of a statement by Hereford Council's barrister at the 2005 Public Inquiry when it was stated 'enforcement' was likely if they were not removed by November 2005. What is the current position?</p> <p><i>The Council is currently considering the expediency of further enforcement action at Brierley Court.</i></p>

7	<p>Mr A. Green, Ivington</p> <p>S&amp;A Davies at Brook Farm and Ox Pastures, Marden have not removed their two-year old plus polytunnels despite the Code of Practice.</p> <p><i>The Council is closely monitoring the use of polytunnels at Marden and is currently considering the expediency of enforcement action.</i></p>
8	<p>Mr A. Green, Ivington</p> <p>The Inspector at the July 2005 Brierley Court Planning Inquiry found the Code confusing and unhelpful. Ergo it needs revision.</p> <p><i>The original decision of the Council to introduce the Code provides for a full review of the operation of the Code every two years. A full review will commence in 2006.</i></p>
9	<p>Mr M. Hooper AVRA</p> <p>Mr Hoopers letter and enclosure has been forwarded to Members of the Committee.</p>
10	<p>R. Elliot &amp; S Lawrance, Hoarwithy</p> <p>We are aware of the overall situation regarding voluntary codes of practice and other legal issues, but our comments are straight from the heart.</p> <p>We run a guest house in Hoarwithy and we are now experiencing a downturn in repeat business as a direct result of the polytunnel development at Pennoxstone Court. Basically, our guests do not want to return to the area because, quite simply, it has been ruined.</p> <p>For instance, it is no longer possible to take good photographs of the three churches, Hoarwithy, Kings Caple and Sellack because the best views have now been spoiled by the unsightly presence of polytunnels.</p> <p>With specific reference to Agenda Item 7, Paragraph 19 (Second review of voluntary codes of practice for the use of polytunnels in Herefordshire) we would like to point out (as others no doubt have done) that we are in the middle of an AONB and therefore the unchecked growth of polytunnels is inappropriate.</p> <p>We would also add that, whatever has been said or not said to Mr Cockburn, the acreage of ground covered with polytunnels has grown year on year in the three years since we moved into Aspen House, and now covers such a huge area that, not only does it appear to cover most of the fields across the river from Hoarwithy, but also it is now visible as one drives down the hill from Little Dewchurch. More fields are being prepared for polytunnels even as we write.</p> <p>Voluntary practice or not, Mr Cockburn seems to be covering fields in plastic just as fast as he can, and the idea that these structures are temporary is laughable. We have seen plastic on this site since the day we moved into the village. As for the fact that the plastic might be removed in the winter months, this still doesn't help visitors to the area - they mostly come in summer!</p> <p>On top of that, this activity within an AONB is simply not right in principle, and we would like our comments to be taken into account in any discussions the committee has on the matter</p> <p><i>The Council is aware of the sensitivities around the use of polytunnels in highly regarded landscapes and considers the sustenance of a vital and dynamic rural economy to be one of its key priorities. The Council must however balance the interests of <u>all</u> concerned groups, individuals and businesses who live and work in the countryside</i></p>
11	<p>Mr E. Kelly, CPC</p> <p>Mr Kelly's letter and enclosure has been forwarded to Members of the Committee.</p>

12	<p>Mr Potts</p> <p>My question is what is being done to minimize the increased risk of flooding not only to the road running through Burmarsh but also to the properties of Little Fromington and Hawkersland Cottage?</p> <p>The volume of water coming off the area will increase substantially following rainfall and this is a stretch of road already liable to flooding.</p> <p>An irrigation system is also being developed on the land which will further exacerbate the problem. Can you advise please?</p> <p><i>The use of polytunnels does not necessarily result in increased run off of rainwater. Growers commonly use micro irrigation systems which use captured rainwater and therefore make a positive contribution to the effective use of water resources and reduce run off.</i></p>
13	<p>Mrs J. Ellerton, Wickton Action Group</p> <p><b>The Report</b></p> <p>1.1 Given the title of the ESC's Second Review prepared by the Head of Planning Services, is Herefordshire Council's Code of Practice now considered a Voluntary Code and if so when was it changed and on whose authority?</p> <p><i>Whilst the word voluntary is used in the report title the title of the Code remains "The Herefordshire Code ..." as shown at Appendix 1 and has not changed.</i></p>
	<p>1.2 With reference to Para 19 of the report of the Second Review of the 'Voluntary' Code of Practice for the use of polytunnels in Herefordshire, do Councillors <b>not</b> also consider that the transport, ecological, labour, community &amp; local amenity impacts of polytunnels merit an assessment similar to the impacts of polytunnels on the landscape? If not, why not?</p> <p><i>The impacts listed are an inevitable consequence of any large scale agricultural operations as evidenced by current levels of traffic associated with the apple and potato harvests. Apart from the controversial impact of the use of agricultural plastic in the countryside the impact on the road network, local ecology, labour and community are arguably an inevitable result of modern, large scale agriculture and are not attributable solely to polytunnel growing operations.</i></p>
	<p>1.3 Under the Code, applications are sought in respect of polytunnel development. Para 10 of this report suggest planning enforcement action may be taken if applications are not forthcoming. On that basis, what is the difference in development terms between polytunnel development under the Code and polytunnel development outside the Code? In other words, why does it constitute development if an application is not made under the code but if it is made under the Code, it is not deemed development by Herefordshire Council?</p> <p><i>In the absence of a substantive body of case law or any national policy or guidance the Council has taken a decision that any polytunnel growing operations which exhibit characteristics of permanency will require to have planning permission. Such characteristics include a declared intent to leave operational polytunnels in the same location for longer than two years or the use of "out of soil" growing methods.</i></p>
	<p>1.4 Does the ESC not consider that the implementation of both Recommendations B and C would be premature in the light of the announced December publication of both reports relating to the Public Inquiries at Brierley and Waverley?</p> <p><i>Recommendation b) provides for a mechanism to review the Code as a direct and necessary response to any decisions arising from both the</i></p>

	<p><i>Waverley and Brierley cases. Recommendation c) provides for the consultation provisions of the Code to be incorporated into the draft Statement of Community Involvement which is a statement of how the Council will consult the Community on planning related policies and decisions and is a requirement of the Planning and Compulsory Purchase Act 2004.</i></p>
1.5	<p>Is the ESC satisfied that the democratic process has been best served by the absence of public and community consultation over the past year with regard to the impacts and experiences of large-scale polytunnel development and which omission is now reflected in the Report of the Second Review?</p> <p><i>One of the key aims of the Code is to encourage a dialogue between the growers and their immediate neighbours. Throughout the process of the development of the Code there has been a comprehensive process of consultation resulting in a full dialogue between the Council and the varied and diverse interests in the wider community.</i></p>
1.6	<p>The figures quoted in the Second Review are misleading in regard to the current total area of all polytunnel development in Herefordshire. The effect of polytunnel development is not just limited to a specific location, but needs to be assessed by the ESC cumulatively across the county. Will the ESC provide a comprehensive listing of the acreage and location of polytunnel sites across the county? This must include all polytunnel sites, both before and after adoption of the Voluntary/Non-Voluntary Code of Practice and consist of both those with and without planning permission.</p> <p><i>A comprehensive survey of the use of polytunnels throughout the County will be undertaken as part of the full review of the Council's policy and the operation of the Code in the latter half of 2006.</i></p>
	<p><b>Planning Issues</b></p> <p>2.1 Would the ESC please make clear their reasoning for not including the previous planning judgements of Skerritts and Brinkmans? The relevance of these cases to current polytunnel issues cannot be ignored and indeed, other planning authorities consider these judgements as being central to their policy of requiring planning permission for all polytunnel development. Why not in Herefordshire?</p> <p><i>The implications of both the Skerritts and Brinksman cases were considered during the drafting of the Code. Although Herefordshire Council considers the seasonal use of lightweight, temporary Spanish polytunnels to constitute an agricultural use of land it requires planning permission for other types of polytunnel usage.</i></p> <p>2.2 If under the Code, polytunnels constitute development after two years, why is not the same activity called development from the first day of construction? It is an accepted feature of Development Control that development requires planning permission whether it is temporary or permanent.</p> <p><i>If a grower chooses to continue to use polytunnels in the same location outwith the 2 years provided for in the Code the Council will require planning permission to be applied for as a consequence of the use contemplated having acquired a characteristic of permanence.</i></p>
2.3	<p>Could you explain why putting trestle tables in the polytunnels suddenly means planning permission is needed – the visual impact, traffic use, environmental damage etc. is the same and in fact good Herefordshire Grade A land need not be ruined and it could all be grown in grow bags on an industrial site.</p> <p><i>The use of the trestle growing method is by implication a manifestation of permanence as no locational rotation is required to protect the long term condition and fertility of the soil being used. In view of this characteristic of</i></p>

	<p><i>implied permanence the Council considers that planning permission is required.</i></p>
	<p><b>Other Matters</b></p> <p>3.1 The current Code of Practice does not prevent the two year rotation of tunnels adjacent to the original location, thus enabling the effective permanence of polytunnels in a particular area without planning permission. Will the ESC seek to address this issue?</p> <p><i>The 2 year rotation provided for by the Code means that polytunnels cannot be located on the same site for longer than 2 years without requiring planning permission.</i></p>
	<p>3.2 Does the ESC believe that the ecology of the environment is adequately protected under this Code of Practice and if so how?</p> <p><i>The Code is silent on the impact of the use of polytunnels on the wider ecology of an area. There is no evidence to support any claims of the detrimental impact of polytunnels on the wider ecology of an area.</i></p>
	<p>3.3 At Wickton, a further 400 acres of plastic piping and covering have been installed with no notification to the Council, Parish Council or neighbours. Does the ESC intend to take enforcement action?</p> <p><i>Works involving the laying of plastic piping as part of irrigation systems are agricultural permitted development. All other works being undertaken at Wickton are subject to a notification provided by the grower to the Council.</i></p>
	<p>3.4 Further deviations from the Code include:</p> <ul style="list-style-type: none"> <li>▪ The plastic is not removed from the frames but only rolled down and remains attached to the structure for all to see throughout the year <i>The rolling back of the polythene covering leaves the tunnel in a non-operational state as it does not fulfil its function of supporting a protective covering for the growing crop. Although left hanging from the frames in a rolled –up state the polythene is no longer covering the frames and is therefore no longer creating the impact in terms of reflectance and glare which is the main visual impact.</i></li> <li>▪ No Landscape Assessment accompanied by ‘mitigating’ measures has been provided <i>A Landscape Assessment has been provided in accordance with the terms of the Code and has been commented on by the Council’s Landscape Officer.</i></li> <li>▪ Waste polythene is not removed and lies beside the bridle path <i>The grower in this case is aware of the terms of compliance with the Code in respect of unused polythene and a visit by an Enforcement Officer is planned to ascertain any breach of the Code in this respect.</i></li> <li>▪ As you consider compliance with the terms of conduct will bring benefits to growers and residents, could you please list the benefits to residents who live near the sites? <i>The principle benefit to the wider community is that of promoting dialogue concerning the impact of an agricultural operation between the growers and parish councils and near neighbours whilst providing the Council with valuable information with regard to the extent of polytunnel usage.</i></li> </ul>