

MINUTES of the meeting of Environment Scrutiny Committee held at No 1 Committee Room, Shirehall, St Peters Square, Hereford on Monday, 24th October, 2005 at 2.00 p.m.

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

Councillors: P.J. Dauncey, K.G. Grumbley, J.G.S. Guthrie, T.W. Hunt, J.W. Newman, Ms. G.A. Powell, Miss F. Short and J.B. Williams

In attendance: Councillors: P.J. Edwards (Cabinet Member - Environment), J.W. Hope MBE, T.M. James and R.M. Wilson

27. APOLOGIES FOR ABSENCE

Apologies were received from Councillor D. B. Wilcox as Cabinet Member (Highways and Transportation).

28. NAMED SUBSTITUTE

There were no substitutes.

29. DECLARATIONS OF INTEREST

There were no declarations of interest.

30. MINUTES

RESOLVED: That the minutes of the meeting held on 26th September, 2005 be approved and signed by the Chairman.

31. SUGGESTIONS FROM MEMBERS OF THE PUBLIC ON ISSUES FOR FUTURE SCRUTINY

No suggested areas for scrutiny were raised by members of the public.

32. BIODIVERSITY CONSERVATION STRATEGIC FRAMEWORK

The Committee was informed of progress upon the preparation of the Council's Biodiversity Strategic Framework and actions in hand to support related activity.

At the June 2005 meeting the Committee received a report setting out the strategic objectives which would form the basis of a framework for the Council's work in relation to biodiversity conservation. While work on preparing the Statement was proceeding, a delay had occurred to take advantage of funding opportunities and to assess the implications of new advice in relation to biodiversity conservation, as set out in more detail in the report.

The Committee received a short presentation on 'Herefordshire Lifescape'. The Committee heard that the Council had recently completed the pilot project, which

had been substantially funded from external sources (LEADER+ and English Nature) to investigate how biodiversity and landscape potential might be promoted to local communities.

The Committee noted that while a lot of good environmental work had been carried out on the river Monnow, that area had not been included as the project had been based on the landscape included in the LEADER+ scheme, namely the valleys of the rivers Arrow, Frome, Lugg and Wye. While data was collected on footpaths, no biodiversity guidance had been issued to landowners. There were however, plans to place a toposcope at Coleshill. No adverse comments had been received during the community input stage to the project concerning green lane use by four-wheel drive vehicles. However, the current project covered a limited area of the County and it was thought that comments may be received when the project was expanded to other areas following the recent funding agreement with the Forestry Commission. Guidance arising from the project produced for specific Parishes would be distributed for information to Members of the Committee.

Questioned on whether the Lifescape project was giving value for money the Committee noted that the Council had drawn in funding from a number of different sources, was working with other partners in this subject and that the data collected would provide evidence that the County was improving its biodiversity conservation.

RESOLVED: That the report on issues being considered for inclusion in the Biodiversity Conservation Strategic Framework be noted.

33. SECOND REVIEW OF THE VOLUNTARY CODE OF PRACTICE FOR THE USE OF POLYTUNNELS IN HEREFORDSHIRE (Pages 1 - 6)

The Committee considered whether revisions were needed to the Code of Practice for the use of Poly tunnels in Herefordshire in light of experience through the growing season of 2005.

The Head of Planning Services reported that following consideration by this Committee in June 2004, the decision by Cabinet in October 2004 to approve the Code of Practice provided for it to be reviewed in two years time i.e. in 2006. This decision further required that an update position in respect of the application of the Code be reported to Cabinet and the Environment Scrutiny Committee on an annual basis. His report was therefore made at an interim stage with the intention of updating the Committee as to progress. His report briefly outlined the history of the issue; the number of planning applications received for poly tunnels; the number of notifications in accordance with the Code of Practice; enforcement issues and case law, including public local inquiries. The report also highlighted that as part of the new development plan system (the Local Development Framework), pre application consultation could be requested through the forthcoming Statement of Community Involvement, the principals of which the Code was in accordance with. He commented that the outcome of the two public local inquiries (Brierley Court, Herefordshire and at Waverley Borough Council, Surrey) may help establish the planning basis for the control of poly tunnels.

The Director commented upon the difficult issue of balancing the need for a successful agricultural economy with the environmental concerns expressed by campaigners against poly tunnels. In the absence of a definitive legal definition for when poly tunnels came within planning control the Code of Practice was the best available means of control.

In response to a question concerning the volume of traffic generated by this type of agricultural operation, particularly in narrow country lanes, Councillor K.G. Grumbley

suggested that Section 3 bullet point 2 of the Code be amended to read: "The grower will submit local and landscape impact statements accompanied by mitigation measures. The local impact statement should specify, as a minimum, the proposed vehicular routing, volume and type of traffic. Mitigation measures may include one-way routes, hardening of passing places or surface improvements. Routing should be included on the location plan (Checklist item 9). Landscape impact mitigation may include the use of less reflective or coloured polythene." Having heard legal advice concerning the criteria for making Traffic Regulation Orders the Committee debated the suggestion and noted the current intention to get growers to co-operate in implementing mitigation measures. It was proposed that the issue merited further consideration by the Cabinet Member (Environment).

Questioned on the speed of securing compliance with the Code the Cabinet Member (Environment) stated that once instances of non-compliance were identified the appropriate enforcement action was undertaken, however, with further resources, Planning Services could be more proactive in both enforcement of and guidance in relation to the Code.

Issues concerning any adverse effect on the economy of the County, in particular tourism, and the use of new technology would be further considered by the Polytunnel Review Group when it reconvened in 2006.

In view of the number of written questions received from the public prior to the meeting, it was confirmed that an individual written response would be given in each case. A copy of the questions/comments and the subsequent response is set out at appendix 1 to these Minutes.

The Chairman permitted a number of questions or comments from the public attending the meeting, the principal points being:

- Responding to whether there was a deliberate link between this agenda item and the previous item on Biodiversity, the audience noted that environment issues were the primary remit of the Committee. Many of the environmental aspects of polytunnel use had been touched on during the review (as set out in the Committee's report on the findings of the Polytunnel Review published June 2004).
- In relation to the issue of increased water run off due to the expanse of plastic the Committee were informed that this was a general issue affecting not only polytunnels, but any covered surface e.g. residential development. The Committee was informed by a grower that it was in the grower's interest to both preserve the soil and store and recycle the water.
- The Committee heard from a grower that he considered it impossible to efficiently grow organic strawberries without polytunnels. He had 3 acres under green polytunnels and while he thought the visual effect had improved further research work was needed.
- Concerning the siting of polytunnels in the County the Director of Environment considered that in accordance with the 2 year time scale in the Code, many polytunnels were being relocated to new sites, hence there were less in the south of the County.
- Reference was made to the legality of the Code. The Committee were informed that the current Code was legal. In relation to enforcement, under the Code, the grower undertook to provide notice to the Council confirming that notification had been given to the relevant Parish Council(s) and nearby neighbours of the intention to erect polytunnels. The Head of Planning Services reported that the Code was not an instrument of enforcement but a

means whereby planning officers were made aware of proposed sites and thereby considered and advised on planning issues. Planning Services was made aware of issues by the public and Parish Councils on a weekly basis and each issue was looked into when raised.

- Issues around noise were dealt with under the Environmental Protection Act 1990.
- A view was expressed that the Council was ignoring two clear pieces of case law and that the Council would ignore the outcome of the current two local public inquiries. It was also suggested that the Council was acting inconsistently with other authorities and that this caused problems where the policy of both Wye Valley and Malvern Hills AONBs (Area of Outstanding Natural Beauty) was concerned. The Committee heard that the cases were neither comprehensive nor clear cut and in the circumstances the Council considered that the Code was wholly appropriate. The Council would consider the outcomes of the two public local inquiries in relation to their relevance to the polytunnel issue.
- A further grower informed the Committee that the majority of growers complied with the Code. Growers were embracing new technology e.g. less reflective plastics. He claimed that there was no evidence of any detrimental effect on the environment (wildlife) and that a last season strawberry field was now producing a good crop of winter wheat. He was not aware of any detrimental effect on tourism caused by polytunnels. He was happy to comply with the Code and contribute to the next review.
- The Committee noted that planning application CW05/0698/F for 'raised bed cultivation' at Marden had been withdrawn pending an Environmental Impact Assessment (EIA) due to the suspected presence of a protected species (Greater Crested Newt).
- Responding to a suggestion that the Council encourage growers to plant other crops e.g. grape vines in the Wye Valley, the Committee was informed that the Council was unable to prescribe the type of crops farmers wished to grow.
- It was suggested that as the Code was only voluntary there was therefore little legal power to enforce it. It was further suggested that to abandon the Code now in favour of requiring a planning application would cause severe difficulties, and be costly for the Council.

RESOLVED:

That

- a) **the experience of the past 12 months of operation of the Code of Practice be noted;**
- b) **a further report be made in the event of any significant change in case law which would change the basis of the current Code of Practice;**
- c) **the Cabinet Member (Environment) be recommended to consider incorporating the pre-consultation requirements of the Code of Practice into the draft Statement of Community Involvement currently in preparation;**
- d) **the Cabinet Member (Environment) be recommended to continue to operate the Code of Practice subject to a full review in October 2006; and**
- e) **the Cabinet Member (Environment) be recommended to consider**

amending the Code at Section 3 bullet point 2 to read: "The grower will submit local and landscape impact statements accompanied by mitigation measures. The local impact statement should specify, as a minimum, the proposed vehicular routing, volume and type of traffic. Mitigation measures may include one-way routes, hardening of passing places or surface improvements. Routing should be included on the location plan (Checklist item 9). Landscape impact mitigation may include the use of less reflective or coloured polythene."

34. CAPITAL BUDGET MONITORING

The Committee was advised of progress with regard to the 2005/06 Environment Capital Programme within the context of the Herefordshire Council Capital Programme.

The Assistant County Treasurer reported that the total of the Capital Programme had decreased from £13,461,000 notified to the previous meeting to £12,047,000 being a net reduction of £1,414,000. The project in relation to City Centre Enhancements for £2,000,000 had been transferred to the Economic Development Capital Programme. A number of other minor changes had increased the programme by £586,000. The current Capital programme was indicated at appendix 1 to the report.

In response to a question concerning transfers between Capital and Revenue budgets at the time of the last budget round, particularly in relation to the revised forecast figure of £4,843,000 for Capitalised Maintenance of Principal Roads, the Director of Environment confirmed that the revised forecast figure was as printed and clarified the general budgetary position in this context.

The Committee noted that the specific expenditure heading for Vehicle Activated Signs may be phased out as this type of sign should be considered and if necessary included in any individual speed reduction scheme.

RESOLVED that the position set out in the Capital Budget Monitoring report be noted.

35. ENVIRONMENT REVENUE BUDGET MONITORING

The Committee was advised of the latest budget monitoring position for the Environment programme area revenue budgets for the period to 30th September, 2005. The report listed variations against budget at this stage of the year.

The Director of Environment and the Assistant County Treasurer reported the current budgetary position and highlighted a potential overspend in relation to winter and road maintenance. While car parking income looked likely to exceed its target by £200,000 a shortfall of £30,000 was expected in income from de-criminalised parking. With the forthcoming renegotiation of contracts for public transport an overspend of £35,000 was expected in 2005/6 rising to £250,000 on 2006/7. It was expected that some of the additional costs could be mitigated by the increase in car parking income. Anticipated over-expenditure on Street Cleansing (£160,000) and public toilets (£50,000) would be contained within the Highways and Transport budgets by the reallocation of resources. It was expected that expenditure on Licensing would exceed income by £50,000 as the income received had not come up to expectations.

The Waste Disposal P.F.I contract budget was expected to break even after taking into account the virement to Homelessness in 2005/06. The position was worse than 2004/05 due to the increased proportion of the contract (i.e. up to 25.7% from 24.77%) being borne by the Council and a reduction in the amount received for P.F.I. credits because of a change in the charging basis being used.

Building Control and Development fee income was above budget by approximately £280,000. However, it was anticipated that the target income would be exceeded by £200,000 for the year. £304,000 of the Planning Delivery Grant had been brought forward into 2005/6.

The Committee noted the report that in the event of a standard winter, highway winter maintenance costs could exceed the budget by £200,000. On questioning this position the Committee were informed that a £108,000 reserve could be used to support any shortfall and in the event of a particularly bad winter the Government's 'Bellwin Scheme' could be called on however, certain criteria would need to be met.

RESOLVED: That the position set out in the Environment Revenue Budget Monitoring report be noted.

36. BEST VALUE REVIEWS - IMPLEMENTATION OF IMPROVEMENT PLANS

The Committee received a report on the remaining actions and exceptions to the programmed progress in the improvement plans resulting from the Best Value Reviews (BVR) of Development Control, Public Conveniences and Public Rights of Way, detailed at Appendix 2 to the report.

Following consideration of the Best Value Review of Commercial Enforcement - Stage 3 report at its meeting on 6th June 2005, the Committee considered the draft improvement plan for the Service prior to being finalised by the Cabinet Member (Environment) for implementation. The draft Improvement plan was attached to the report at appendix 1.

Following concerns regarding performance against BVR performance indicators relating to planning applications determined within specified timescales, an action plan had been drawn up and progress against these actions was indicated in appendix 3 to the report.

RESOLVED: That the report on the implementation of improvement plans (Appendix 2), including the draft improvement plan for Commercial Enforcement (Appendix 1) and the action plan relating to planning applications (Appendix 3) be noted.

37. MONITORING OF 2005/2006 PERFORMANCE INDICATORS - APRIL 2005 TO SEPTEMBER 2005

The Committee was updated on the exceptions to the targeted progress made by the Environment Directorate for the six months April to September 2005 towards achieving the performance indicators/targets which appear in the Council's Corporate Plan.

The Director of Environment highlighted that the performance target for BV165 – percentage of pedestrian crossings with facilities for disabled people – had changed in that crossing places at road junctions now needed to be included. The Directorate were currently struggling to achieve the revised target. Also in relation to this target the Committee noted that arising from the delay to the Commercial Road resurfacing programme, currently programmed for 2005/2006, works would be undertaken to

footway, cycle and bus facilities at the location. The provision of a box junction at the Commercial Road / Stonebow Road junction would be investigated.

Referring to the 'Kilometres of rural footway constructed' target the Committee noted that the 2.01km achieved so far related to the Roman Road scheme. The Committee was informed that a footway scheme at Bodenham, which had been temporarily held up due to compulsory purchase issues, was about to commence.

Commenting on the planning targets the Director of Environment reported that generally, staffing levels had recovered and the action plan referred to in minute No 36 – Best Value Reviews – would address outstanding issues. He commented that when compared with the recent high number of planning applications the numbers were now showing signs of reducing. He also reported that during discussions with the Audit Commission the Commission had commented that, compared with other authorities, Planning Services were providing planning guidance on applications too early in the planning process. This issue would be reconsidered, however, he warned that if the Service limited the guidance given to final submission stage the Services may be accused of a reduction in the level of service.

RESOLVED: that subject to the comments detailed above, the report on the Monitoring of 2005/2006 Performance Indicators – April 2005 to September 2005 be noted.

The meeting ended at 4.15 p.m.

CHAIRMAN

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

1	<p>Agenda Item 6 (Biodiversity)</p> <p>H M Morgan Wye Valley AONB & 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 & SAC designated areas. How then can your committee reconcile this planning permission with your 'Biodiversity & 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>
2	<p>Agenda Item 7 (Polytunnels)</p> <p>H M Morgan Wye Valley AONB & 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 19th Sept 2005,organised by HWVAS & which I chaired. Unanswered questions concerned:-</p> <p>1. The 'unlawfulness' of this code, as repeatedly stated by H.C.'s own Barrister recently at the Brierley hearing?</p> <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> <p>2. What happens to polytunnels after 4 years in an AONB (or elsewhere)?</p> <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> <p>3. When will Herefordshire benefit from proper planning law as applies in Gloucestershire & elsewhere?</p>

	<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 & 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 & 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&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&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 & 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>The Report</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 not also consider that the transport, ecological, labour, community & 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>Planning Issues</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>Other Matters</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"> ▪ 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> ▪ 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> ▪ 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> ▪ 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>