

# **The Countryside Agency**

## **An Investigation into Polytunnel Development in AONBs and National Parks**

Final Report

January 2006

Entec UK Limited



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**Report for**

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# Executive Summary

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## Study Remit

The contentious issue of farm-scale polytunnel use first came to widespread public attention in November 2002 following a report on the BBC's Countryfile with respect to polytunnel development in Herefordshire and the significant opposition that existed to such developments in the County. Since then there have been a number of cases illustrating the conflicts between the use of polytunnels and the impact on the visual quality of designated landscapes. The Countryside Agency requires information and guidance with a view to advising Government of their position under the requirements of Section 85 of the 1949 National Parks and Access to the Countryside Act. Particular concerns relate to:

- the visual intrusion caused by large scale development of polytunnels within and around AONBs and National Parks;
- the scope of planning control resulting from confusion over whether or not polytunnels are considered 'development' and if so whether or not they constitute 'permitted development' under the Town and Country Planning (General Permitted Development Order) 1995;
- whether powers within the planning system are sufficient to control polytunnel development; and
- that there is an inconsistency of approach to planning for polytunnels across England which is leading to an impact on designated landscapes in terms of visual quality.

The aim of the study is to inform the Countryside Agency of the current issues associated with planning for polytunnels in and around designated landscapes by addressing the following objectives:

- to assess the scale and nature of the 'issue' of polytunnel use in and around AONBs and National Parks;
- to summarise the effects (especially the visual impacts) of long term, large scale, polytunnel use on designated landscapes;
- to determine the status of polytunnel use within the Town and Country Planning Act 1990, examining different interpretations of policy in terms of Appeals Decisions and Case Law;
- to see how planning decisions on polytunnels are applied in designated landscapes; and
- to summarise the key issues and present recommendations.

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## Approach to the Study

The project relies on both primary and secondary sources of information. A comprehensive review of the policy and legal context for polytunnels has been undertaken as well as an analysis of key case studies and planning appeal decisions for the past five years. Statistics and publications were used from the Office for National Statistics (ONS) and Department of Food and Rural Affairs (Defra) to assist in setting the context of polytunnel use. A questionnaire survey of English local authorities was also undertaken, with telephone interviews conducted with key local authorities including National Parks, AONB Officers and Local Authority Planning Officers and, for an industry perspective, with the National Farmers Union (NFU).

## Overview

The review of the current state of polytunnel activity and treatment by the planning system in England revealed a significant diversity and perhaps even confusion as how such examples of change are dealt with. Key issues identified are outlined, summarising the apparent ambiguous state of the exercise of planning judgement and offering recommendations for the Countryside Agency and their partners to help mitigate the more significant effects of polytunnels as they evolve in use. Suggestions for introducing consistency in how such matters are dealt with at the local level are set out. The centrepiece of this is a practice note for planners consisting of key issues to be considered and a flow chart which sets out the idealised sequence of development control practice.

## Key Issues and Recommendations

### Principles

- In themselves, polytunnels are not necessarily a ‘problem’. Difficulties arise in respect of the confluence and interaction of their: scale, siting, cumulative impact, location (in sensitive areas), and associated development. The net effect of the interplay of these factors has been the despoilation of the visual quality of *some* AONBs, and in the eyes of some the issue has been dealt with unsatisfactorily by the planning system.
- Protected landscapes, by definition, should be accorded special treatment, although balancing the demands of a designated landscape with demonstrable need is difficult and needs to be undertaken on a case-by-case basis. AONBs are working landscapes which, to some extent, have to deal with challenges to their established character and function. These include changes to agricultural land uses and practices.
- All public bodies, by virtue of Section 85 of the Countryside and Rights of Way Act 2000, have a duty of regard for the primary purposes of AONBs.
- Professional judgement and recommendations from planners, based on legislation and case law, and decisions made by planning committee members is at the heart of the consideration of whether activities require planning permission.

### Polytunnel Development

- In terms of pressure for the use of polytunnels, there appears to be no immediate difference inside or outside AONBs.

- Scale and cumulative impact of are particular concerns within AONBs, where landscape capacity to absorb change is commensurately lower than less visually sensitive landscapes.
- Considerable controversy has been generated by specific cases (notably in Herefordshire) but the planning merits, or otherwise, of the actual polytunnel structures are often ‘muddled’ by ancillary development issues.
- The use of plastic or fleece mulching (for potatoes, for instance) can have a similarly significant visual impact as polytunnels, although there is no question of this type of operation being considered under the planning system.
- Environmental issues, apart from visual impacts, lie beyond the scope of this study and would demand extensive, field-based appraisal, exploring such issues as: the local environmental impacts of plastic sheeting; soil sterilisation; water run-off; and biodiversity.

### **Exercising Planning Judgement**

- As a wider issue, polytunnel development appears far more diffuse, and evidence from local authorities and appeals suggests that a case-by-case approach is being, and has to be, applied. Whether this approach is sufficiently robust to deal with increased pressures (either by scale or cumulative impact) is open to speculation.
- The central question of this particular study thus becomes: are polytunnels (apart from any associated development) of a sufficiently different scale and impact such that they compromise the visual qualities of an AONB/NP and thus demand special attention? Relevant planning issues to be considered will include: the size, scale and potential cumulative impacts of the proposals; their possible temporary or seasonal nature; whether the proposals might be considered to be agricultural operations and thus accorded permitted development rights; and economic considerations affecting viability of the farm holding.
- There remains scope for interpretation as to whether polytunnels constitute operational development. The tests of size, permanency and method of fixing apply where the planning system is engaged.
- Issues such as agricultural need (as suggested in the Nathaniel Lichfield report) could be taken into account through consideration of Whole Farm Plans, for instance. This would help to balance the range of material considerations which apply.
- It is a judgement of the local planning authority as to whether the planning system should be invoked, and where certain agricultural operations are deemed to be development, subjecting them to tests which apply under PDR (size, permanence and method of fixing).
- Examples of polytunnels at a significant scale examined through this research, notably that of Tuesley Farm, Waverley, can be taken as constituting development, i.e. they are essentially permanent, fixed and substantial in size. In such cases, the GPDO would not apply (which allows for the consideration of siting, design and

appearance as part of a prior approval process) thus requiring full planning application.

- There are apparent inconsistencies in the way in which local planning authorities are judging whether polytunnels require planning permission, fall under PDR, or should be treated as purely agricultural operations.
- For permitted development, siting, design and appearance can be taken into account through the prior approval process for permitted development set out in the GPDO for Class A units (i.e. on farms of more than five hectares). A critical point to note is that if a polytunnel is not considered as a 'building or structure' or 'building operation', and thus development, then it will not be followed through to these potential controls. One of the issues noted in the research and survey work is that in some cases polytunnels are not considered development by local planning authorities in the first place and therefore not subject to any planning controls whatsoever via the GPDO or through formal planning applications.
- Central Government, via two planning ministers in July 2005 made their views clear that the planning system has all the powers it needs to deal with any planning problems raised by polytunnels.

### **Recommendations for the Countryside Agency and Partners**

- Accept that the polytunnel issue is a locally significant one which is likely to grow as farming economics undergo further re-adjustment.
- Accept that the planning system is charged with assessing the merits of polytunnel applications and through national guidance (notably recently provided by planning ministers) and the procedures laid out in the Planning Act, a suitable framework exists for case-by-case appraisal.
- Recognise that the Codes of Practice developed in Herefordshire and nationally represent an important first step toward meeting farmers 'halfway'. Further development of this approach could be explored.
- Develop a practice note for development control planners which builds on the Codes of Practice including a reminder of the duty of care of local planning authorities toward the special qualities of protected landscapes (as set out in Section 85 of the Countryside and Rights of Way Act 2000 and statutory AONB Management Plans).
- Work with partner agencies to appraise the cumulative environmental impact of polytunnel development, either at a field or farm-scale.
- Keep a watching brief on the emergence of polytunnel developments through the established network of AONB Officers. This could be through an email circular, for instance.
- Keep a watching brief on key appeal cases which will test planning law and the balance of issues considered. The appeal decision relating to Waverley Borough Council (see summary below) is of particular note, and at least one case in Herefordshire is likely to be taken to appeal.



- Ensure that AONB officers are fully appraised of the planning facts, via the proposed flowchart and current practice, including case law. Current cases could be reported back to a central 'database'.
- Investigate in detail cases of apparent inconsistent judgement amongst planning authorities regarding the interpretations and applications of the tests of size, permanency and method of fixing.
- Seek clarification with ODPM that the protection of the visual quality of AONBs is a prime objective, and is a material consideration which applies to agricultural operations and development.
- Submit representations on any ODPM consultation on reviews of Annex E of PPG7 or the GPDO (see section 3.5 of this report).
- Press for the submission of landscape impact assessments for all proposed developments within and adjacent to AONBs. Techniques developed for landscape Character Assessment can assist this process.

## **Annex: Tuesley Farm Appeal Decision, 15 December 2005**

### ***Background***

This long-awaited appeal decision has drawn together a number of issues of specific relevance to this study. These are set out below and as such stand as an update to the main report, as opposed to incorporating the issues within the analysis. Indeed the issues raised in the appeal serve to highlight and reinforce issues set out in the report.

The case involved two appeals: Appeal A (APP/R3650/C/04/1160262) relating to the stationing of caravans and other works and Appeal B (APP/R3650/C/04/1160263) relating to the erection of polytunnels, windbreaks, an earth bund and other works. This review concentrates on issues pertinent to Appeal B given its concentration on the polytunnel issue proper, with ancillary development (principally caravans and attendant servicing) being dealt with by Appeal A.

The appeal site at Tuesley Farm, Godalming covers about 190ha. During 1995 cumulative polytunnel coverage was 60.8ha with maximum coverage at any one time of 39ha. The Inspector spent some time reviewing the facts surrounding the use of polytunnels at Tuesley Farm. The prime facts, established in this case, are:

- Machinery is used to screw the metal legs into the ground (para 24).
- It takes 45 man-hours to fully-erect one acre and 32 man-hours to dismantle the same. Teams of ten are engaged in the erection and dismantling processes (para 25).
- In essence, polytunnels are erected on a greater or lesser number of blocks around the farm for nine months of the year (para 29).
- To determine whether *building operations*, and hence *development*, have occurred involves the application of a legal test (para 38).
- The legal test involves consideration of three factors - size, permanence and degree of physical attachment - in deciding what is a building or structure (para 39). The

approach to the question of whether there [has] been a building operation [is] to consider, first, whether there [is] a building. If there [is] a building, applying the [legal test] (para 40).

***What are the principle elements of the Inspector's decision?***

The key components of the Inspector's decision are detailed below. Particularly salient parts of the argument are underlined.

- The fact that the component parts of one polytunnel are designed such that they can be linked to one another, side-by-side, emphasises the solidity of appearance of the network thus formed (para 49).
- Applying the appellant's evidence of the number of man-hours per acre needed to erect the polytunnels the task would be neither quick nor simple, serving to illustrate the scale of the work needed to provide the polytunnels (para 51).
- Together, these factors indicate that, at Tuesley Farm, the polytunnels to which the notice is directed are, as a matter of fact and degree, of substantial size and proportion (para 52).
- As a matter of fact and degree, the polytunnels have a substantial degree of physical attachment to the ground (para 53).
- The polytunnels can be moved only by being taken-to-pieces, rather than being moved bodily. Once they are dismantled in this way, then bearing in mind the length of time, expressed by the appellant in man-hours per acres, taken to do so, that would be of sufficient scale, in itself, to amount to demolition and, by definition, a building operation (para 55).
- Nor would the polytunnels in this case be transient, ephemeral or fleeting. Having regard to all of the circumstances of the present case and as a matter of fact and degree, the provision of polytunnels on land at Tuesley Farm, by reason of their size, permanence and degree of attachment to the land, is not a use of land, but comprises a building operation and hence 'development' within the meaning of the 1990 Act (as amended) (para 58).
- By Class A of Part 4 of Schedule 2 to the GPDO, 'permitted development' extends to "the provision on land of buildings, moveable structures, works, plant or machinery required temporarily in connection with and for the duration of operations being or to be carried out on, in, under or over that land or on land adjoining that land" (para 59).
- As a matter of fact and degree, the existence of such polytunnel blocks within the single planning unit for up to nine months of the year could not reasonably be regarded as being 'required temporarily'. But even if I am wrong and were to accept the appellant's contention that the polytunnels are in place 'temporarily', within the ordinary meaning of that expression, they are not 'required for operations' and so the entitlement given by Part 4 would not apply (para 73).
- From this background, land used for the purposes of agriculture would be a use of land rather than an operation. Class A of Part 4 of Schedule 2 would not enable

buildings to be erected to facilitate the use of the land for agriculture. The polytunnels would amount to ‘development’ (Para 74).

- The polytunnels would embrace varying proportions of the appeals site for parts of the year. But for the times they would be present, their impact arising from the sheer scale of the development, especially in circumstances in which blocks of polytunnels are erected on adjoining parcels of land, would dominate and overwhelm the appearance of the existing largely open rural landscape (para 133).
- The extensive blocks of polytunnels would not meet the high standards of design and appearance that development plan policies seek of buildings in the countryside. The proposed development, together with the landscaping masterplan, would be out of place in terms of their scale, height, form, and appearance, failing to protect the openness and intrinsic qualities of the countryside and failing to respect its character (para 142).
- In the balance that has to be drawn between the needs of this agricultural enterprise and environmental impact arising from the presence of the polytunnels, I am firmly of the view that those agricultural needs would be far outweighed by the harm to the countryside arising out of the scale and appearance of the polytunnels (para 162).

#### ***Why is this decision relevant and what are its implications?***

This appeal, notwithstanding the specific circumstances surrounding the scale of the operation and its siting, demonstrates the testing of the principle of development in respect of the erection of blocks of polytunnels as they are now commonly used on a commercial scale (that is, poles mechanically screwed into the ground and requiring teams of men and a considerable amount of time to do so). As such the decision is important in reaching the firm conclusion that this type of polytunnel, on this scale, clearly constitutes development by virtue of the three tests of size, permanence and degree of physical attachment, as well as falling outside the provision for permitted development under the GPDO. As a development, this case also demonstrates that the scale of the development compromises the intrinsic qualities of the countryside and as such fails to respect its character. In addition, proposed landscaping of the development would serve to damage landscape character. These factors, in total were judged to far outweigh any agricultural need offered as mitigation.

A statement by the Director of Planning and Development at Waverley is apposite: “The acceptability of the developments has been determined largely on specific local circumstances in this case; therefore, this outcome should not be interpreted as setting a precedent for the whole of the country. However, it will be a useful case for planners elsewhere because it established that polytunnels of the type involved in this decision do require planning permission; and it also sets out a range of tests to establish whether this may be acceptable in defined circumstances” (emphasis added).

In conclusion, the Tuesley Farm appeal decision confirms the analysis of this report, that polytunnels do constitute development (by virtue of the legal test), therefore require planning permission, and in the case of AONBs and other areas of high landscape quality would be hard to justify given their damaging effects on the intrinsic qualities of the countryside and its character. As stated in the report, it is the duty of local planning authorities to apply this logic accordingly. The Tuesley Farm appeal decision should give them more substantive grounds for doing so.

The full appeal decision letter can be found at:

<http://waverweb.waverley.gov.uk:8080/live/wbc/pressrel.nsf/86ab9805fc3ebfa90025667c005cef03/617813782c690351802570dc0056275c?OpenDocument>



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# 1. The Study

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## 1.1 Background to the Study

Provision of the creation of National Parks and Areas of Outstanding Natural Beauty (AONBs) as statutory landscape designations was set out in the National Parks and Access to the Countryside Act, 1949 (the 1949 Act). The aim of these designations is to protect, conserve and enhance the natural beauty and character of these nationally important high quality landscapes, and in the case of National Parks to provide for recreational opportunities. The Countryside and Rights of Way Act 2000 (the 2000 Act) provides further regulation and protection of AONBs<sup>1</sup>. Recent Government planning guidance<sup>2</sup> re-asserts that designations including AONBs and National Parks should have an equally high level of protection for their natural beauty and landscape quality.

A currently contentious issue in some AONBs and National Parks concerns polytunnel development. The issue first came to widespread public attention in November 2002 following a report on the BBC's Countryfile with respect to polytunnel development in Herefordshire and the significant opposition that existed to such developments in the County. Since then there have been a number of cases illustrating the conflicts between the use of polytunnels and the impact on the visual quality of designated landscapes.

The Council for the Protection of Rural England (CPRE) have expressed strong opposition to polytunnel development in designated landscapes, such as in the Surrey Hills AONB. Organisations such as the Campaign for Polytunnel Control (CPC) and local resident's groups have also been established and mobilised to object to polytunnels in designated landscapes<sup>3</sup>.

Farm-scale polytunnel use is therefore a controversial topic and the Countryside Agency requires information and guidance with a view to advising the Government of their position under the requirements of Section 85 of the 1949 Act. Under the 1949 Act the Countryside Agency have a duty to report to Government and local authorities on development likely to affect the natural beauty of a designated landscape. Particular concerns relate to:

- the visual intrusion caused by large scale development of polytunnels within and around AONBs and National Parks;
- the scope of planning control resulting from confusion over whether or not polytunnels are considered 'development' and if so whether or not they constitute

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<sup>1</sup> Section 11A of the 1949 Act and Section 85 of the 2000 Act require relevant authorities, in the course of carrying out their functions, to have regard to the purposes of National Parks and AONBs.

<sup>2</sup> ODPM (2005) **Planning Policy Statement 7 (PPS7): Sustainable Development in Rural Areas**

<sup>3</sup> see <http://www.geocities.com/polytunnelcontrol/peoples-voice.htm> and <http://www.cpreherefordshire.org.uk/site/Polytunnels.htm>



‘permitted development’ under the Town and Country Planning (General Permitted Development Order) 1995;

- whether powers within the planning system are sufficient to control polytunnel development; and
- that there is an inconsistency of approach to planning for polytunnels across England which is leading to an impact on designated landscapes in terms of visual quality.

## 1.2 Study Aim and Objectives

The aim of the study is to inform the Countryside Agency of the current issues associated with planning for polytunnels in and around designated landscapes by addressing the following set of objectives:

- to assess the scale and nature of the ‘issue’ of polytunnel use in and around AONBs and National Parks;
- to summarise the effects (especially the visual impacts) of long term, large scale, polytunnel use on designated landscapes;
- to determine the status of polytunnel use within the Town and Country Planning Act 1990, examining different interpretations of policy in terms of Appeals Decisions and Case Law;
- to see how planning decisions on polytunnels are applied in designated landscapes; and
- to summarise the key issues and present recommendations.

## 1.3 Approach to the Study

The project relies on both primary and secondary sources of information. A comprehensive review of the policy and legal context for polytunnels has been undertaken as well as an analysis of key case studies and planning appeal decisions for the past five years.

Statistics and publications were used from the Office for National Statistics (ONS) and Department of Food and Rural Affairs (Defra) to assist in setting the context of polytunnel use. A questionnaire survey of English local authorities was also undertaken, with telephone interviews conducted with key local authorities including National Parks, AONB Officers and Local Authority Planning Officers and, for an industry perspective, with the National Farmers Union (NFU).

## 1.4 Structure of the Report

This report is structured as follows. Section 2: An introduction to polytunnels; Section 3: Polytunnels in England; Section 4: Planning for Polytunnels in Protected Landscapes; and Section 5: Key Issues and Recommendations.

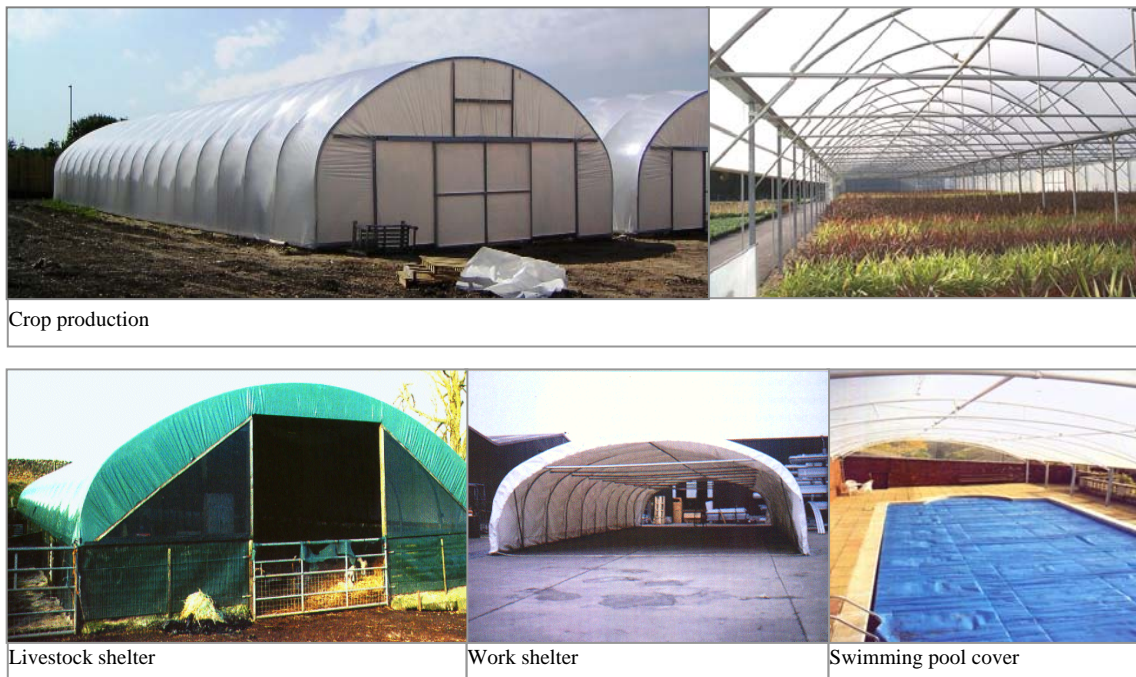
## 2. An Introduction to Polytunnels

### 2.1 What is a Polytunnel?

#### 2.1.1 Description

Essentially a polytunnel is a plastic covered tunnel, but can vary in terms of size, scale and use. Polytunnels are primarily used for growing crops, but are also used as livestock shelters, work shelters and swimming pool covers, for example (**Figure 2.1**). These different types of polytunnels typically have different characteristics in terms of size, scale, structure and colour relating to their use. **Appendix C** illustrates how polytunnels, used for crop production, can cover extensive tracts of land.

**Figure 2.1** Examples of Polytunnels



This study considers only polytunnels used for crop production by commercial growers at a significant scale (i.e. where there are one or more polytunnels covering a field or fields), given that these are at the centre of current controversy. However, if there are major issues apparent with other types of polytunnel then these are highlighted.

Polythene sheeting used to cover crops at ground level and stand alone small tunnels (less than 1 metre in height for example) are not be considered in this study, although the cumulative impact of many smaller tunnels may need to be examined. It is not easy to a draw a hard and fast line,

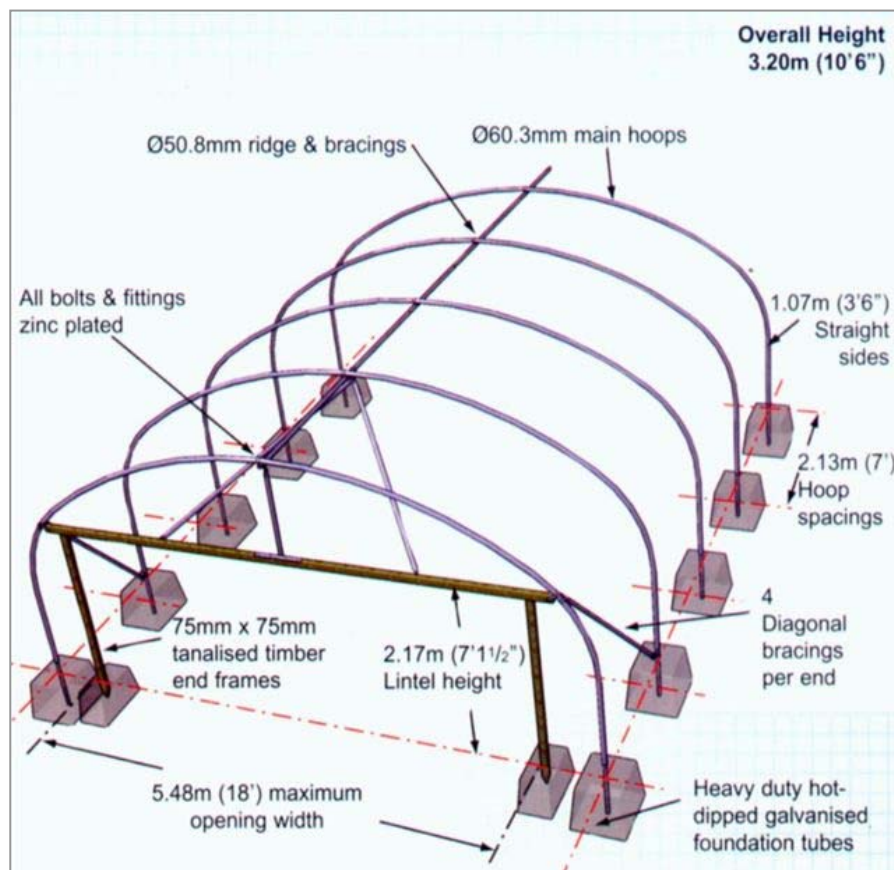
but fundamentally it is polytunnels at an 'industrial' as opposed to domestic scale that are the focus of this study.

Polytunnels protect crops from weather and disease, providing a more controlled environment in order to potentially extend the growing season increase the yield and improve the quality of a particular crop. Polytunnels are predominantly associated with horticultural crops which include the general typologies of fruits, vegetables and ornamentals (flowers for example). They are sometimes called 'Spanish' tunnels, particularly in relation to growing fruit.

### 2.1.2 Structure, Design and Scale

A polytunnel typically consists of galvanized steel hoops covered with a transparent polythene sheet. However, there are various sizes and materials used in their construction. **Figure 2.2** illustrates the typical size and structure of a polytunnel.

**Figure 2.2 Typical Polytunnel Construction**

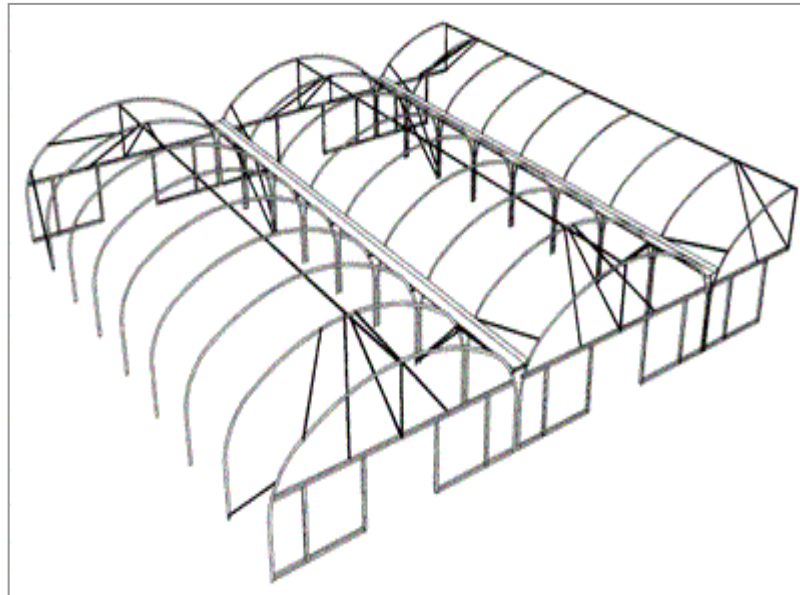


The key differences when looking at examples from other companies tend to be in size, type of metal used for the frame and/or fixings, method of fixing to the ground (some have foundations, as in the example above, and some are more temporary) and the type of polythene used. There is also variation in the level of on-site construction or assembly needed. Most of the companies

will supply the polytunnel in kit form to be erected on-site. The fundamentals however, of a metal frame clad with a polythene sheet remain relatively consistent.

Recent developments in polytunnels include ‘multispan’ structures which are essentially two or more polytunnels linked together forming a much larger structure as illustrated in **Figure 2.3** and **Appendix C**.

**Figure 2.3 Multispan structure**



There are also an increasing number of extras and specifications that can be supplied with polytunnels, for example: foundations, ventilation kits, irrigation systems, sliding doors, and windows for example. Polytunnel technology is clearly evolving, with developments in new materials and the range of suppliers that currently exists suggesting that it is a thriving sector. There are also a significant number of companies and garden centres supplying the domestic user of smaller scale polytunnels.

## **2.2 What are the Key Drivers for the Increased Use of Polytunnels?**

### **2.2.1 Agricultural Decline and a Need to Diversify**

The wider agricultural sector in the UK, of which horticulture is a part, has been in decline in recent years and contributed just 0.8 per cent of national gross domestic product (GDP) in 2004<sup>4</sup>. Crop production makes up a significant part of the agricultural sector, with the major

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<sup>4</sup> It should be noted however that agriculture’s contribution to the national economy has never been significant in comparison to the other major sectors such as services and manufacturing, contributing 1.5% of national GDP in 1996.

areas of production including: wheat, barley, oilseed rape, peas and beans, horticulture, sugar beet and other crops. The largest area in terms of land coverage is wheat at 41% of a total crop area of 4.5 million hectares as of 2003.<sup>5</sup> Horticulture accounts for 4% of the total land area under crops. The need to diversify and strengthen other sectors such as horticulture is therefore seen as an important factor in sustaining the agricultural industry. One of the key areas of growth in recent years has been the horticultural sector and specifically soft fruits. **Appendix A** provides a general analysis of the economic context of the UK horticultural and soft fruits industry in terms of trends in the volume of production and the use of protective environments. This is based primarily on Defra's *Basic Horticulture Statistics*.

### 2.2.2 Growth in the Soft Fruits Industry

British Summer Fruits, an organisation representing a significant proportion of UK soft fruit growers states that:

*"British-grown soft fruits, such as strawberries and raspberries, have become an important and successful rural business. Berries now represent the most important market in which UK fruit growers are involved. Sales in UK supermarkets of home-grown berries have increased 130% in the last four years.*

*"The success of the British soft fruit industry can be largely attributed to the use of the polytunnel (sometimes called a Spanish tunnel) which was introduced to British farming in 1993."*<sup>6</sup>

This statement from British Summer Fruits is tested through an analysis of the horticulture and specifically the soft fruits sector in terms of the relationship between total land area and volume of production and the increased use of protective environments such as polytunnels.

Picking out the key points from **Appendix A** and looking specifically at soft fruit production, the total planted area decreased from almost 11,000 hectares to 8,500 hectares between 1994 and 2004, with one of the most significant decreases in the planted area covered by strawberries. However, over the same period there was also an increase in the volume of production, for strawberries by as much as 25% even though this is the area with the most significant decline in terms of planted area. This tends to suggest an increase in efficiency - of being able to produce more fruit from less land. An increased use of protective environments such as polytunnels can therefore be seen as one possible explanation for this.

### 2.2.3 Why are Polytunnels Used?

The need for polytunnels in terms of enabling diversification and strengthening horticulture is described, but what are the benefits of polytunnels to the sector in terms of why they are being used?

From publications produced by British Summer Fruits the manufacturers and suppliers of polytunnels and Entec's consultations with the NFU, the industry view of the benefits of polytunnels can be summarised as follows:

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<sup>5</sup> ONS, 2005 - UK 2005 Yearbook.

<sup>6</sup> British Summer Fruits (2005) at <http://www.britishsummerfruits.co.uk/index2.htm>

- an extended growing season - crops can be produced earlier than would otherwise be possible and the growing season lasts longer removing the impact of weather;
- an increase in saleable yield - due to a more controlled environment the proportion of misshaped and lower class produce is reduced;
- an increase in overall yield - due to a more controlled environment in terms of optimising temperature and humidity;
- a decrease in pesticide usage - with fewer diseases affecting the crops;
- protection from weather - production and harvesting generally unaffected by weather conditions; and
- sustainability - reduce reliance on exports and thus transport activities.

## 2.3 Summary

The benefits of polytunnel use from an industry perspective are fairly clear. The view is that they have enabled a growth in the horticultural sector in terms of the volume and quality of produce, for soft fruits and strawberries in particular. The manufacturing and supply of polytunnels also appears to be a strong area, with a multitude of companies and technological advancements in their production. The general view is that the sector will continue to grow with polytunnels used more widely to enable greater levels of production of existing crops alongside increasing experimentation with other crops such as stoned fruit, not currently grown under polytunnels.

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Final Report

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## 3. Polytunnels and Planning in England

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### 3.1 Where and Why are Polytunnels Considered an Issue?

#### 3.1.1 A Survey of Local Planning Authorities

A postal questionnaire survey of 299 English local planning authorities was undertaken in order to gauge the distribution and intensity of the polytunnel issue. The survey sets the context for study in terms of which local planning authorities are dealing with polytunnels, either through advice, applications or enforcement, thus demonstrating the local authorities where polytunnels are present. The authorities who responded are mapped in Figure C2, Appendix C. A response rate of 33% was achieved. Appendix B presents a qualitative analysis of the survey returns, with selected returns mapped in Appendix C, the key issues arising being:

- Almost three quarters of respondents have dealt with the issue of polytunnels, two thirds of these through formal applications, and only just over 10% through enforcement action.
- There does not appear to be any obvious correlation between local authorities who have dealt with polytunnels and the location of designated landscapes.
- However, three quarters of those authorities resorting to enforcement action have a designated landscape under their jurisdiction.
- Specific policy or other guidance on polytunnels (with the exception of Herefordshire) has not been produced, the issue is often covered by references to agricultural buildings.
- There are differences of opinion as to whether polytunnels fall under Permitted Development Rights (PDR), almost half considering that they do, one quarter considering that they require planning permission and one fifth considering that they fall under both categories. Within the both category, a number of respondents stated reference to the GPDO (General Permitted Development Order) tolerances.
- Size, permanency and nature of fixture (the three development tests – see section 3.3), were cited as key determining factors in any decision making.
- Visual impact is cited as by far the most significant planning issue (86%), with two thirds of respondents identifying it as the key issue.
- Other issues include development in the open countryside/green belt, agricultural justification/diversification, and economic viability.



### 3.1.2 Trends in Polytunnel Activity

Figure C4 (Appendix C) illustrates the level of involvement by the authorities who responded to the survey in terms of planning applications, advice or enforcement action. There is no real pattern to discern from the spatial distribution of this activity on the maps, however comparing Figure C4 with Figure C1 (Agricultural Land Classification) it can be seen that, in general, authorities who have dealt with polytunnels at any level are not on Grade 1 or 2 agricultural land (i.e. the best land with the most fertile soils) and typically on Grades 3, 4 or 5. This is not exact, but is a general relationship identified from comparing the two maps and demonstrates that soil quality is not a determining factor and polytunnels are therefore appearing in areas where it may not otherwise be possible to grow specific crops. In such a case it is suggested that their use will continue to increase.

It is important to note however, that the local planning authorities may have dealt with polytunnels at different scales and levels of activity. The necessarily coarse grain of the survey obscures the highly variable nature of polytunnels, from small scale domestic to large scale commercial, along with case-by-case specifics. There is no differentiation between this in the results but it is still useful in showing in which authorities they are being dealt with and what approach they are taking. The initial survey informed further consultations with local planning authorities, identifying those who have dealt with planning for polytunnels in and adjacent to designated landscapes.

## 3.2 The Policy Background

The survey of local planning authorities has thus revealed different interpretations of when polytunnels might require planning permission. This is perhaps a key stimulus for the whole polytunnel controversy and rooted in at least two factors: the privileges accorded to agriculture in respect of their operations and the judgement exercised by individual planning authorities over what is, and is not, development.

The basis of operation of the statutory planning system in the UK is set out in the Town and Country Planning Act 1990 (the 1990 Act). Land-use planning decisions are made by the respective local planning authority on anything considered to constitute 'development' in accordance with the 1990 Act. If a polytunnel is considered to constitute 'development' then it requires planning permission and an application needs to be submitted for determination by the local planning authority. In certain cases developments such as minor householder extensions and agricultural operations are allowed to go ahead without submitting a planning application because they are afforded 'permitted development rights'. In these cases, the system already permits the development, but this is based on a strict set of parameters defined in the Town and Country Planning (General Permitted Development) Order 1995.

To clarify the status of polytunnels in the planning system, there are two key questions that need to be answered in respect of any particular case:

1. Are polytunnels development?; and
2. If polytunnels are considered to be development, are they classed as permitted development?

The policy background and issues associated with these factors are discussed in detail in Appendix D with a range of examples, appeal decisions and case law used to illustrate these discussions. The main issues are summarised in the following sections.

### 3.3 Are Polytunnels ‘Development’?

One of the major determinants of whether or not a proposal falls under planning control and thus requires planning permission is whether or not it constitutes ‘development’. Under sec.55 (1A) of the 1990 Act, development is defined as:

*“the carrying out of building, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land”*

Under the 1990 Act building operations include: demolition of buildings, rebuilding, structural alterations or additions to a building and other operations normally undertaken by a builder. Maintenance work or improvements to the interior of a building or that do not materially effect the external appearance of a building are not considered to constitute development under the provisions of the 1990 Act.

The 1990 Act’s definition of development needs breaking down into two distinct parts when considering whether or not polytunnels constitute development. Firstly, whether or not erecting a polytunnel constitutes a ‘building operation’ and secondly whether or not erecting a polytunnel or polytunnels constitutes a ‘material change of use’ of the land in question. For this study we concentrate on the consideration of a building rather than a material change of use of the land in question (although this is discussed in Appendix D) since this is where the main issues tends to be focussed through an analysis of appeals and our consultations.

Building operations or operational development is analysed in detail in **Appendix D**. Essentially, three tests should be applied to any particular case. These are summarised in the box below and are considerations of whether something is a ‘building’ and whether a ‘building operation’/‘operational development’ has taken place:

<b>Size</b>	A building is normally something that is constructed on-site as opposed to being brought ready made.
<b>Permanence</b>	A building is denoted by a physical change of some permanence.
<b>Physical attachment</b>	This is seen as inconclusive in itself, but can influence the other two factors one way or the other (foundations etc.).

There are examples in **Appendix D** demonstrating how the policy has been applied. A key example is that of *Skerrit of Nottingham Limited v. Secretary of State for the Environment, Transport and the Regions and Harrow London Borough Council*, where operational development was held to have occurred by the Court of Appeal for a marquee erected for eight months of the year. Essentially the ruling was that the marquee took days to erect and there was a ‘significant degree of physical attachment to the land on which it stood’.

### 3.4 Issues in Determining 'Development'

Looking at examples specific to polytunnels there are a number of key issues that can be extracted demonstrating where they are considered to constitute development. Generally if they are of a significant size, combined with a significant degree of permanence in terms of the method of fixing to the ground (concrete foundations or other fixings) then development is viewed to have taken place. There are also examples of where an Inspector held development to have taken place because of the fact that the tunnels were erected on site as opposed to being transported. This also relates to other issues such as method of fixing to the ground.

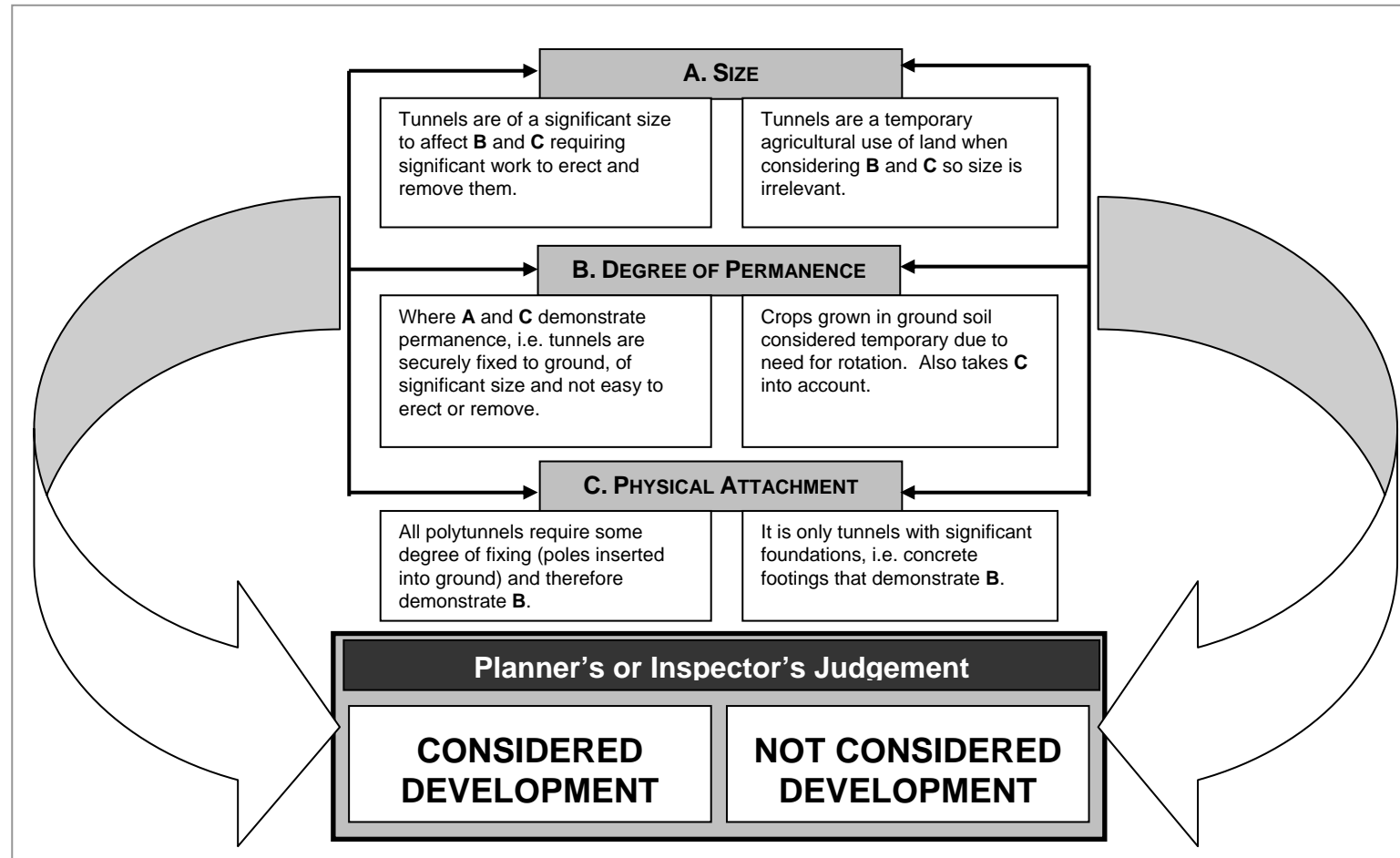
In all cases, one of the key issues that comes out is the idea of permanence - i.e. whether or not they are a temporary use and readily mobile. Looking at the Brinkman Case (summarised in Appendix D), the nature of the polytunnels and the manner of their erection requiring a team of up to 30 men at any one time was seen as significant and therefore not easy to remove and therefore not considered to be a temporary structure.

More generally, in the Appeals decisions analysed, Inspectors appear to be generally consistent in their application of the three tests of size, permanence and physical attachment.

A defining appeal was reported in December 2005 (*Hall Hunter Partnership v. Waverley Borough Council*) where the Inspector concluded that by virtue of size, permanence and method of attachment, polytunnels covering almost 40ha were development.

**Figure 3.1** seeks to encapsulate the process of judgement employed in respect of the three tests for development. Whilst being a somewhat simplified overview, it demonstrates the linkages across the three areas. There are subtleties within these three tests that have come to light through our consultations and analysis of appeals decisions. In terms of the degree of permanence for example, there has been an interpretation that crops grown in the ground under polytunnels are considered temporary uses (due to crop rotation) and the polytunnel is not therefore considered development. It would be considered development if crops were being grown on tables for example (as per the Brinkman case). In general, however, this does seem to be a particularly confused area in the way in which local authorities are applying the tests, whilst appeal decisions generally show consistency in the approach of the Planning Inspectorate.

Figure 3.1 Interpretations of the 3 tests to judge 'development'



### 3.5 Are Polytunnels Classed as Permitted Development?

If a polytunnel is considered to be development under the three tests of size, permanence and physical attachment, then the GPDO can be applied. This automatically grants planning permission for certain agricultural developments within prescribed parameters. This is set out in Annex E to the previous PPG7 (now replaced by PPS7) but PPS7 states that Annex E remains extant “*pending completion of a review by the ODPM of the GPDO 1995, and subsequent issue of any guidance to replace this annex.*” (PPS7, page i). The main features relating to the GPDO are set out in more detail in Appendix D of this report.

#### Application of the GPDO for agriculture

Essentially permitted development rights for agriculture extend across two classes: ‘A’ and ‘B’. Class A is for larger agricultural units (of at least five hectares) with Class B applicable to smaller units (of at least 0.4 hectares). Permitted development rights afforded to Class A farms are much greater than those for Class B farms.

Under both classes, development must relate to agricultural land and not relate to dwellings or gardens. The rights allow for the introduction of new agricultural uses not relating to ones which already exist.

Permitted development rights do not exist in certain prescribed cases such as a development within 25 metres of a trunk road. This is something that is being applied, exemplified through consultations with the local planning authorities. In such cases a planning application needs to be submitted.

In terms of size, a permitted development would not exceed 12 metres in height (or three metres when adjacent to an aerodrome) or exceed 465 square metres in terms of floor space.

#### Prior Notification and Prior Approval

Even if an agricultural development is permitted under Part 6 of the GPDO there is still a requirement for the farmer, for example, to notify the local planning authority (deemed ‘**prior notification**’) and obtain ‘**prior approval**’ (on siting, design and appearance) before they can implement their permitted development rights in certain circumstances for all Class A permitted development (Part A.2(2) of the GPDO). The ‘certain circumstances’ to which prior approval applies includes:

- i. The erection, extension or alteration of a building – however, prior approval is only required for extensions and alterations on Article 1(6) land (i.e. National Parks). Extensions and alterations on all other land where the process is not deemed significant do not require prior approval.
- ii. The formation or alteration of a private way.
- iii. The carrying out of excavations or the deposit of waste.

The key circumstance relating to polytunnels is therefore point i above (the erection, extension or alteration of a building) relating to the consideration of a polytunnel as a ‘building’ or ‘building operation’ under the three tests introduced in Section 3.3.

For such developments, details of the proposed development will need to be submitted to the local planning authority, who then have 28 days to determine whether or not prior approval is required for certain details (i.e. siting, design and appearance for example) otherwise a proposal can be given the go-ahead as permitted development. If prior approval for certain details is required, then the local planning authority has 8 weeks to make a decision.

This therefore allows for landscape and visual impact considerations to be taken into account by the local planning authority, with the opportunity to mitigate undesirable impacts through the use of conditions or making changes to the scheme. The designation of an area as AONB can therefore also be taken into account through the prior approval process. It is also important to note that the principle of the development is not a relevant issue under the prior approval process since it is already deemed permitted under Class A of the GPDO.

### **Issues in the application of the GPDO**

A critical point to note is that if a polytunnel is not considered as a 'building or structure' or 'building operation', and thus development, then it will not be followed through to this stage, and the GPDO will not apply. One of the issues noted in the research and survey work is that in some cases polytunnels are not considered development by local planning authorities in the first place and therefore not subject to any planning controls whatsoever via the GPDO or through formal planning applications.

For all Class A developments considered as the erection of a new building the prior approval process comes into force, with extensions and alterations only requiring prior approval in National Parks (Article 1(6)) land. It would potentially be useful to consider Article 1(5) land (National Parks, AONBs and Conservation Areas) under this section of the GPDO to afford a similar level of control to Class A permitted development for extensions or alterations in these areas. The degree to which this is relevant to the issue of polytunnel development is dependant on the extent to which the 'extension' or 'alteration' of polytunnels is occurring. It is more likely that polytunnels are 'new' developments which can potentially be considered under the 'erection' category thus engaging the prior approval process. As a side issue, it can also be suggested that prior approval should also be required for extensions and alterations as Class A developments on Article 1(5) land (therefore AONBs) and not just Article 1(6) land as to not undermine the statutory purpose of such land.

## **3.6 Material considerations**

For a development which goes beyond the limits of permitted development set out in the GPDO, a planning application will need to be submitted. This then allows a development to be assessed with the full weight of the statutory planning system behind it so that the impacts can be assessed and possible objections can be taken into account.

In determining a planning application for approval or rejection a planning officer will take into account and need to balance a number of 'material considerations' which can include:

- the primacy of the Development Plan;
- national Policy in Planning Policy Statements, White Papers, Circulars and Acts;
- national, regional, or local designations (Green Belt, National Parks, AONBs, SSSIs, Nature Reserves etc) of environmental or landscape importance;

- visual impact;
- ancillary uses;
- transport and access issues;
- the need for the development;
- planning precedent (national and local) - i.e. what has been the approach to similar developments in the past; and
- other planning matters, as appropriate.

It is important to note that this list is not exhaustive. It merely represents the types of issues that a planning officer will take into account in determining an application for planning permission. These considerations are assessed with respect to planning decisions made in designated landscapes in Section 4.

In addition to landscape and planning considerations the following environmental issues might also be considered, in most cases requiring a detailed environmental impact assessment to thoroughly understand these issues in their context.

- **Soil sterilisation** - This is a practice associated with polytunnels and soft fruit growing to reduce the risk of disease affecting the crop. Soil sterilisation is an issue closely associated with the use of polytunnels through the relationship between production methods for soft fruits, i.e. in the case of strawberry growing, both polytunnels and soil sterilisation are complementary tools used to increase the yield of the crop.

*“Some growers are able to rotate their land to minimise disease and other soil borne problems. However, most growers frequently find it more profitable to grow soft fruit in the same fields and sterilise the soil, thus concentrating production on the best land.*

*“With continued economic pressures to maintain and improve fruit quality, as well as increase the length of the growing season, many new strawberry varieties have been developed. Unfortunately it is amongst some of these new varieties that increased susceptibility to soil borne pathogens are found.*

*“The product most widely used for strawberry soil sterilisation has been methyl-bromide” (CERTIS, 2005<sup>7</sup>).*

Methyl-bromide is seen as harmful to the ozone layer as the gas is released from the soil during the treatment process which is why the Government seeks to promote alternatives through their Pesticides Safety Directorate. The use of Methyl-bromide is to be phased

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<sup>7</sup> <http://www.certiseurope.com/Content/Home.asp> - Soil Sterilisation for Strawberries with Basamid. CERTIS are a commercial enterprise specialising in ‘crop production solutions’. They argue that using ‘Basamid’ to sterilise the soil is an effective alternative to Methyl-bromide. The environmental impacts of the use of this chemical would of course need to be investigated.

out from the end of 2005.<sup>8</sup> A guide on alternatives to Methyl-bromide has also been produced by ADAS.<sup>9</sup>

The NFU argues that sterilising the soil does not do permanent damage, and that the soil returns to its previous state after 12 months<sup>10</sup>. However, active measures need to be taken to re-establish soil fertility through the introduction of organic matter and the regeneration of soil structure, if there is repeated sterilisation. Soil structure is 'inherited' from its previous condition and won't change dramatically over a short period of time. However, without microbial, bacterial, algal and invertebrate activity, the structure will degrade. Repeated sterilisation of soil and trafficking for soft fruit production will damage its structure. Rotation of fields used for cropping will obviate these problems.

The impacts of alternatives to Methyl-bromide and their precise environmental impacts would need to be examined - a substantial piece of work which is outside the scope of this present study. Key issues to be examined would be: how good the alternatives to Methyl-bromide are, and how confident the growers are in their use? The suppliers of the alternatives claim they are as good, and the growers' adherence to methyl bromide and their suspicion of alternatives is probably based on inertia, resistance to change, and suspicion of government advice, not on any empirical evidence. Alternatives to methyl bromide are probably more expensive, although safer to the operators and the environment, and there might be an increase in costs (plus presumably a cost involved in re-equipping to use the alternatives). Also, if the alternatives are not as good (or if the growers are not confident in them) then there will be the cost of rotation - which involves using a bit more land, and additional set up costs. The upshot could be the spreading of impacts over twice the area, although on only part of the site per year, and the fallowed site could be very unsightly during its unused year - unless the growers use it for a break crop. However, most of them don't have that second enterprise, nor the equipment to cultivate the small areas of land released.

- **The local environmental impacts of plastic sheeting** - the plastic sheeting used is not biodegradable and so difficult to dispose of once its lifecycle comes to an end (the thicker plastics can last for up to five years before needing to be replaced). Burning the plastic to dispose of it will also release harmful chemicals. There are also concerns over its wider

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<sup>8</sup> <http://www.defra.gov.uk/environment/climatechange/ozone/strato.htm> - following the Montreal Protocol, 1987 which seeks to reduce the impacts caused by the emission of man-made chemicals containing Chlorine and Bromine. See also new critical use exemptions at: <http://www.pesticides.gov.uk/approvals.asp?id=1365>

<sup>9</sup> [http://www.pesticides.gov.uk/safe\\_use.asp?id=757](http://www.pesticides.gov.uk/safe_use.asp?id=757) - specifically refers to the use of Methyl-bromide by lettuce growers but also provides guidance on the regulations for the use of the chemical.

<sup>10</sup>

[http://www.nfu.org.uk/stellentdev/groups/public/documents/farming\\_facts/codeofpracticeforth\\_ia43045282.pdf](http://www.nfu.org.uk/stellentdev/groups/public/documents/farming_facts/codeofpracticeforth_ia43045282.pdf) - "Sterilisation is not a common practice but fumigation is sometimes used to prevent a fungal pathogen that lives in the soil and which causes a fatal disease known as verticillium. A fruit farm will fumigate the specific area on which the crop is grown - usually 50% of the field. This destroys organisms 6-8 inches below the surface of the soil. Polythene sheeting is used to protect those parts of the land that are not being fumigated."



impacts in terms of increased surface run-off (see below), and damage to adjacent properties caused by plastic being ripped adrift as a result of high winds.

- **Water run-off** - the plastic sheeting forms an impermeable layer and therefore on a large scale can pose similar problems to that posed by urban areas (concrete, roads, hard surfacing etc as an impermeable layer). Essentially, water run-off will increase, with flooding more of a risk particularly following prolonged and heavy rainfall. The NFU argue that this issue can be overcome by “careful management using drains and gulleys allow this to be diverted into water courses where it is used for irrigation.”<sup>11</sup>

The Environment Agency is the key consultee when it comes to advice on development and flood risk. In May 2005, the Agency objected to two polytunnel developments on the ground of flood risk in South Staffordshire and in the Forest of Dean. The Forest of Dean case concerned a retrospective application for polytunnels on a site in the Malvern Hills AONB. The application was refused on the grounds of landscape and visual impact considerations (being countryside and in an AONB) but also on the grounds of the potential flood risk posed by the development following the objection lodged by the Agency.<sup>12</sup>

- **Biodiversity** - Large scale polytunnel use could minimise biodiversity in terms of a loss of natural habitats, feeding areas and the effects of soil sterilisation reducing soil biodiversity.

These four environmental issues associated with polytunnels are not exhaustive, but indicate some of the main arguments levelled at their use and the potential detrimental impacts. These impacts could be relevant in any location, not just a designated landscape, and the specifics of the impacts would vary from case to case. Only through detailed consultations and an assessment of the environmental impacts could a local planning authority properly consider these factors. It is also important to note that the issues of soil sterilisation and biodiversity can also relate more widely to other agricultural/horticultural production methods associated with a more intensive use of land.

### 3.7 The Government perspective

Due to some polytunnels escaping planning controls altogether (by not even being considered development in the first place) there are calls for Government action to change the planning powers which apply to polytunnels. This would be likely to involve bringing other agricultural

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[http://www.nfu.org.uk/stellentdev/groups/public/documents/farming\\_facts/codeofpracticeforth\\_ia43045282.pdf](http://www.nfu.org.uk/stellentdev/groups/public/documents/farming_facts/codeofpracticeforth_ia43045282.pdf)

<sup>12</sup> <http://www.fdean.gov.uk/kudos/documents/DC.JUNE.05.pdf> -

Application DF2384/M P0640/05/FUL 26.04.2005 - “Insufficient information has been provided by the applicant to demonstrate that the surface run-off would not cause a significant Flood Risk to surrounding land and neighbouring properties as required by PPG.25 and contrary to Policy FC.4 of the District Local Plan and Policy (R)FBE.4 of the District Local Plan Review.”

operations under planning control however and is unlikely to be something that the Government would be keen to do. The Government's current position with respect to polytunnels is that they have no intention to change the current statutory provisions that exist. Yvette Cooper, Minister for Housing and Planning stated, on 20 July 2005 that:

*"Where polytunnels are placed temporarily on agricultural land and used for horticulture, they may be deemed to be a use of land for agriculture and therefore exempt from planning controls under the provisions of section 55 of the Town and Country Planning Act 1990. Where the erection of polytunnels for agricultural purposes is deemed to constitute 'development' under these provisions, 'permitted development rights' under part six of the General Permitted Development Order (GPDO) 1995 may be available, subject to criteria set out in the Order. The Government currently have no proposals to change these statutory provisions."*

This complements the statement of a previous Minister for Housing and Planning (Keith Hill, 21 February 2005):

*"It is for the local planning authority to decide if placing any structure on farmland would amount to development. Even where a polytunnel is regarded as development, it is likely to benefit from the general permission granted in the Town and Country Planning (General Permitted Development) Order 1995. The Office of the Deputy Prime Minister has issued no guidance on polytunnels as such, but we do encourage farmers always to have regard to the impact of their work on the environment."*

These statements generally affirm the conclusions of 3.5, that where polytunnels are considered development, the Government is satisfied that the GPDO is a satisfactory piece of legislation to deal with them.

As discussed in section 3.5, the Government is undertaking a review of the GPDO. This follows the Nathaniel Lichfield Report - *Review of Permitted Development Rights* - September 2003 commissioned by the ODPM. Chapter 10 of the report discusses Part 6 of the GPDO (Agricultural Buildings and Operations). The review states that:

*"To ensure that towable buildings, containers, polytunnels and pig arcs were defined as development, change to primary legislation would be required. This is considered to be too restrictive a measure, in view of the additional burden it would place on farmers when frequently re-siting such structures and when they are currently deemed to be a use of land for agriculture.(Para 10.33)*

*"The GPDO User Guidance document will need to provide very significant guidance on agricultural permitted development rights, particularly on assessing whether:*

- the proposal is development;*
- the proposed development is for the purposes of the agricultural undertaking;*
- the interests of farmers and others are being properly balanced;*

- *the development otherwise benefits from permitted development rights;  
and*
- *the land is agricultural.”(Para 10.34)*

The review therefore recommends no change to the GPDO in terms of redefining polytunnels as development. This is supported in the subsequent statements by Keith Hill and Yvette Cooper in 2005 that the provisions of the GPDO with respect to polytunnels are unlikely to be changed.

In this context, polytunnels are seen as a ‘use of land’ rather than development. They are seen in the same light as towable buildings and pig arcs and thus not development. This goes back to the discussions in Section 3.3 *Are Polytunnels Development?* In certain cases a polytunnel *will* be considered development - it all depends on the characteristics of the polytunnel. In some cases they will not be considered development, but applying the three tests of size, permanency and physical attachment can be used to determine certain polytunnels as development. Entec therefore support paragraph 10.33 of the Nathaniel Lichfield Report in not seeking an amendment to the GPDO - it is the application of considering ‘development’ (i.e. the three tests) at a local level through planning enforcement that enables the range of planning powers through the application process or GPDO to be applied. Landscape and visual matters can then be considered - and a refusal of unsuitable proposals.

## **4. Planning for Polytunnels in Protected Landscapes**

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### **4.1 An Overview Polytunnels in Protected Landscapes**

#### **4.1.1 Introduction**

The chapter explores the extent and character of the polytunnel issue in protected landscapes, with the intention of determining whether there is a specific or generalised problem. The analysis draws on a range of sources to consider the specific impact of polytunnels on protected landscapes. These include: a survey of AONBs and National Parks, appeal decisions and the experiences of individual AONB officers.

AONBs include areas of high quality agricultural land as well as poorer agricultural land. A number of AONBs are classified as having Grade 3 land with some AONBs also containing Grade 2 agricultural land that which would be suitable for horticultural production. The Wye Valley, West Wiltshire Downs and the Lincolnshire Wolds AONBs contain significant areas of Grade 2 land. The quality of agricultural land in the majority of National Parks is limited with Grade 4, 5 and non-agricultural land as defined in the Agricultural Land Classification (Provisional). Such land would not be suitable for horticultural especially soft fruit production. The Agricultural Land Classification throughout England and the location of AONBs and National Parks is shown in Figure C1, Appendix C.

### **4.2 Planning Objectives in AONBs and National Parks**

The basis for the special attention afforded to areas of high landscape quality by the planning system is established in three national policy documents:

- The National Parks and Access to the Countryside Act 1949 (the 1949 Act);
- The Countryside and Rights of Way Act 2000 (the CRoW Act); and
- Planning Policy Statement 7: Sustainable Development in Rural Areas (PPS7, ODPM; 2004).

These are the key documents to be used as ‘material considerations’ in deciding applications for development, and complement other considerations such as local policy, legal precedent, socio-economic factors, existing site use, the need for a development, opinions from statutory consultees and objections from the public. The weight given to each consideration varies according to individual circumstances, but national policy is the starting point.

The special landscape qualities of AONBs and the need for their protection through the planning system, is clearly set out by government thus:

*“The primary objective of the AONB designation is to conserve and enhance the natural beauty of the area. Policies and development control decisions affecting AONBs should take account of this, and it should also be reflected by local authorities in their structure and local plans”<sup>13</sup>.*

*“AONBs and National Parks are both accorded a high degree of protection against inappropriate development through the planning system. Proposals for any major development in one of these areas have to be demonstrated to be in the public interest before being allowed to proceed. Considerations include whether the development is needed in national terms; the impact of permitting it or refusing it on the local economy; the potential for developing elsewhere, or meeting the need in some other way; and the extent to which any detrimental effect on the landscape might be moderated”<sup>14</sup>.*

With regard to the duty of care with which public authorities are obliged to exercise over protected landscapes, the Countryside and Rights of Way Act (2000) states that:

*“In exercising or performing any functions in relation to, or so as to affect, land in an area of outstanding natural beauty, a relevant authority shall have regard to the purpose of conserving and enhancing the natural beauty of the area of outstanding natural beauty.”<sup>15</sup> This obligation is reinforced through in PPS7 which states that: “nationally designated areas comprising National Parks, the Broads, the New Forest Heritage Area and Areas of Outstanding Natural Beauty (AONB), have been confirmed by the Government as having the highest status of protection in relation to landscape and scenic beauty. The conservation of the natural beauty of the landscape and countryside should therefore be given great weight in planning policies and development control decisions in these areas” (para 2).*

Planning authorities, using their current development plan as a benchmark, are thus called upon to exercise balance in their decision-making, weighing policy advice against the facts of a particular case.

#### **4.2.1 A Survey of AONB and National Parks**

##### **Results of a Survey of AONBs and National Parks**

All AONBs within England (37) and all National Parks<sup>16</sup> (8) were sent a questionnaire (Appendix K). Responses received amounted to over 75% of designated landscapes with 30 AONB responses and 6 National Park responses. The distribution of responses is shown in Figure C3, Appendix C.

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<sup>13</sup> <http://www.defra.gov.uk/wildlife-countryside/issues/landscap/aonbs.htm>

<sup>14</sup> <http://www.defra.gov.uk/wildlife-countryside/issues/landscap/index.htm>

<sup>15</sup> Countryside and Rights of Way Act (2000) Section 85

<sup>16</sup> The newly designated New Forest National Park was not issued a questionnaire.

*Are Polytunnels an Issue for Designated Landscapes?*

Approximately 70% (21) AONBs and 50% (4) National Parks considered polytunnels as an issue affecting designated landscapes. Some responses were caveated with comments that it is seen as an emerging issue or they recognised it was an issue in certain places (the Wye Valley AONB being cited). One respondent felt the issue of polytunnels may escalate in the future as farmers/producers respond to market requirements, look to diversify in the light of CAP reform or look for high value/niche crops. A higher percentage of AONB than National Park responses considered polytunnels an issue affecting their designated landscape. This may, in part, be due to the high level of publicity surrounding polytunnels in the Wye Valley AONB which may have raised awareness amongst AONB officers.

*Where have Polyunnel Affected Designated Landscapes?*

Just over half of AONBs (53%) and 63% of National Parks have been affected by polytunnels. Of those AONBs that have been affected by polytunnels half (8) had been affected by polytunnels within the AONB a quarter (4) by polytunnels on the AONB margin and the remaining quarter (4) had been affected by polytunnels both within and on the margins of the AONB. It is important to note that 31% of AONB who have been affected by polytunnels have caveated their response saying it was a small area or just one application.

Of those National Parks affected 60% (3) were affected by polytunnels in the margins of the National Parks whilst 40% (2) were affected by polytunnels within the designated landscape. Areas where polytunnels have affected AONBs/National Parks are shown in Figure C5, Appendix C.

Appendix C also illustrates, using photographs, some examples of how extensive polytunnel development can impact on the visual quality of landscapes.

*How have AONBs Dealt with Polytunnels in the Planning Process?*

The number of AONBs who have dealt with polytunnels through the planning process is just under half at 47% (24). Of those AONB involved in the planning process half (7) have been involved as consultees, three as objector and with the remaining four being involved in other capacities e.g. providing information commenting on guidance.

It should be noted that some AONBs may not be able to deal with polytunnels through the planning process due to time and officer constraints especially when the development is of small scale and/or on the fringes. Also one respondent stated they would not be consulted on all polytunnel applications. Looking at those AONBs that have been affected by polytunnels 38% (6) were involved as a consultee however just over 30% (5) had not dealt with polytunnels through the planning process.

*Other Issues Raised in the Questionnaire Survey*

Within the responses received, two respondents did identify the difficulties associated with polytunnels due to their temporary nature. Concerns regarding polytunnels include the perception of artificiality, similar for example to oil seed rape along concerns regarding soil management. Furthermore development associated with polytunnels can cause more issues than the polytunnels themselves for example excavation to create a level site or claims for agricultural accommodation.

Concerns were also raised by another two respondents about field coverings used to cover crops (fleece and plastic sheeting). For these respondents field sheeting was more of an issue than polytunnels which, in one case, were thought to be more easily mitigated via planting. (This would only be true where polytunnels were of a small scale). It was also recognised that polytunnels can help support the rural economy and allows the growing of local produce which would otherwise be imported, which draws in complex arguments surrounding sustainability. One response stated that the need to respect nationally important landscapes has to be balanced with the market/financial realities facing farmers who also have important roles in conserving and enhancing the countryside.

#### 4.2.2 Evidence from Appeals

Appeal decision letters are a useful source of information on key planning issues associated with developments. Whilst they often represent the most controversial cases and are thus not necessarily representative of the state of planning in any one district, they nevertheless explore often controversial and complex planning issues and the decisions reached and reasoning behind those decisions are widely used as examples of precedent. There have been 63 appeals (Appendix I) involving polytunnels from 2000 - 2004, ten of which occur in AONBs. Appendix J presents an analysis of the decision letters of 18 of these appeals. The broad messages relating to AONBs which emerge from this review are as follows:

- Many appeals concern complex developments of which the polytunnel element is but one aspect.
- Protection of landscape quality (openness, rural character and scenic beauty) is held to be a matter of prime importance.
- Conservation of natural beauty is nevertheless weighed against other considerations relating to the economic and social well-being of an area, in particular the issue of agricultural need.
- Whilst polytunnels have been identified as part of the agricultural scene (*“polytunnels are the type of agricultural structure often seen in the countryside associated with horticultural crops”* [APP/F1230/C00/1043579]), equally they are regarded as visually intrusive (*“polytunnels are not attractive structures and ... would be seen from areas nearby at times of the year when existing deciduous tree screening would be least effective. There would be considerable harm to the appearance of the countryside”* [APP/E2205/A/02/1088206]).
- The scale of polytunnels has been identified as being overwhelming (*“for the times they would be present, their impact arising from the sheer scale of the development, especially in circumstances in which blocks of polytunnels are erected on adjoining parcels of land, would dominate and overwhelm the appearance of the existing largely open rural landscape”* and thus be *“out of place in terms of their scale, height, form, and appearance, failing to protect the openness and intrinsic qualities of the countryside and failing to respect its character”* [APP/R3650/C/04/1160263]).

- Polytunnels have been deemed to be permanent, as they are: “*substantial structures, concreted into the ground and practically will not be moved ... and as such represent building operations*” [APP/Y2620/C/04/1150479]).
- AONBs are regarded as particularly sensitive in character to the visual impact of structures which cannot readily be ameliorated through planting, and which therefore must take precedence: “*... their modern commercial appearance would be out of keeping with the high quality landscape here and would be damaging to the AONB. As a visually important site, the need to protect the landscape of the AONB outweighs the agricultural need. They [barn and polytunnel] cannot be acceptably landscaped as additional planting would itself appear as an intrusive and unnatural feature in the AONB*” [APP/D3830/A/01/1077679]. “*The polytunnels through their materials and location would look particularly alien in this attractive landscape. It would not be satisfactorily assimilated into the landscape*” [APP/Q3115/A/99/1029824/P4].
- More forcefully, and having regard to the fundamental principle of designation, aside from whether there are views across a site: “*although having only a limited impact on public views the integrity of the landscape should be protected within an AONB irrespective of the degree of public visibility*” [APP/P2114/A/01/1074039].
- Whilst polytunnels in themselves might be justified, “*the polytunnels and storage building would be reasonably necessary for horticultural purposes within the unit*”, “*the access including hard surfaces, fences and gated entrances ... opens up the site and proposed structure to views and they harmfully change the rural character of the areas as well as reducing areas for landscaping. These elements have a very urbanising effect on the appeal site and fails to conserve or enhance the AONB*” [APP/U1430/A/02/1096825].
- The question of agricultural need can outweighed by the visual harm (“*in the balance that has to be drawn between the needs of this agricultural enterprise and environmental impact arising from the presence of the polytunnels... agricultural needs would be far outweighed by the harm to the countryside arising out of the scale and appearance of the polytunnels*” [APP/R3650/C/04/1160263]).

Overall, then the evidence from appeals appears to be that the Planning Inspectorate place considerable weight on the integrity of statutory landscape designations, whilst accepting that there could well be legitimate reasons for allowing polytunnels. There appears to be little doubt that polytunnels, even in a relatively modest form, constitute development and need to be judged as such their merits. The appeals considered here supplement the two defining cases which determined polytunnels as operational development (see **Section 3.3** and **Appendix D**).

#### 4.2.3 Interviews with AONB Officers and Planning Officers

A series of telephone interviews with AONB officers and Planning Officers were conducted to provide further background on specific cases, where appropriate, and also identify emerging issues (**Appendix G**). Contact with the Chichester Harbour AONB Officer discussed the Brinkman case<sup>17</sup> which, in principle, sets a benchmark of scale and permanence against which

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<sup>17</sup> T/APP/X98/L3815/003017/P6 Brinkman Brothers Ltd against Chichester District Council 15<sup>th</sup> June 1999



other such 'developments' could be judged. This case was used by the protestors in Herefordshire as the centrepiece of their case. The AONB Officer recognises that there has been a gradual move to horticulture as it is a profitable business within the agricultural sector. An increase in plastic sheeting has also been noticed within the area. This is visually intrusive and there is reflection from the sheeting, primarily it is visually shocking when driving around the small country lanes in the area. However, only major polytunnels are a particular issue - smaller scale enterprises are common and can be adequately screened. As the Brinkman case above was won by the Local Authority it has effectively deterred more development of this kind. At present it is not an issue but it hovers in the background. Chichester is a favourable area for horticulture and there is potential for significant pressures in the future.

In the Officer's opinion, no permitted development should be allowed within an AONB. The scrutiny for prior approvals, (in his opinion), is minimal. Development control officers do not see it as their job to check validity of the proposal and pass it straight to their farm officer who is often biased towards the farming community. It is acknowledged that the approach taken in different authorities does vary - in the case of Chichester this appears to go beyond a high level of tolerance with the inadequate application of permitted development rights.

These views are broadly reflected by the High Weald AONB Officer who considered that the planning system should not have that much of an issue with poly tunnels as they are agricultural and temporary/seasonal in nature. As a general rule, the AONBs perspective on small scale polytunnels is that:

- they are temporary structures;
- the visual impact is limited to the immediate location; and
- it does not affect/alter the landscape – i.e. has no structural effect on the landscape.

If large scale development (i.e. whole fields) the temporary and seasonal nature of the polytunnels would still be true however the visual impact would be greater e.g. the development outside Lewes/Uckfield where the reflection from the polythene gives the perceptions of flooding. However, the issue with large scale development would be purely on the visual impact. Poly tunnels do not change the landscape as land cover is not altered i.e. woodlands lost, fields ploughed. Local politicisation is identified as a significant issue. Often AONB designation is used as a reason for objecting by locals who oppose change within their locality.

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**Address: New Barn Farm, Old Park Lane, Bosham**

Spanish polytunnels do amount to development. An enforcement notice required the removal of polytunnels at a 203 ha. salad and strawberry farm. The tunnels had a floor area of 2.67 ha. and were up to 4 m. in height. An inspector had to determine a number of issues including whether they constituted development since there were no previous decisions or court cases on the subject. A plethora of legal cases were reviewed. The main considerations related to their size, permanence and physical attachment. They were very large and although not erected by builders but agricultural workers, the 'Y' poles were screwed 0.6 m. into the ground throughout the year with rotation every four years. Thus notwithstanding any physical change in the character of the land, they constituted operational development rather than a use of land. An appellant then argued that Schedule 2 Part 4 of the GPDO appeared to permit temporary buildings required in connection with agricultural operations carried out on agricultural land. However the tunnels were not viewed as being temporary. Moreover agricultural operations were a use of land rather than operational development and thus were not permitted. The 465 sq.m. tolerance was exceeded by a massive margin such that they were not permitted under Part 6. The LDC for the polytunnels was dismissed because permission was clearly required and under ground (a) the visual impact was detrimental to an AONB and countryside. Under ground (f) total removal was justified notwithstanding the potential economic implications associated with finding an alternative method of growing strawberries.

They will state the ‘change’ is incompatible with the AONB – the same reason is used to oppose travellers whilst in fact the impact is highly localised and often not of a landscape nature. AONB designation is often used to resist change social, political and economic which doesn’t really have any landscape impact.

The Lincolnshire Wolds AONB Officer has had little contact with the polytunnel issue but would welcome guidance on the issue especially if different planning authorities deal with polytunnels in different ways i.e. some saying they require planning permission and other do not. This is especially pertinent for AONBs who fall within different districts. If different districts operate differently this causes confusion and difficulty for applicants.

Discussions with the Wye Valley AONB officer revealed the degree of complexity to the polytunnel issue as it has evolved in this particular area. The salient points are as follows:

*Effect on the Wye Valley AONB*

- The culture of agriculture in the area predisposes attitudes towards an acceptance of agricultural interests – around two thirds of the AONB is intensively farmed.
- There is widespread agreement that the polytunnel developments do nothing to conserve or enhance the character of the AONB. The preparation of the Code of Conduct represents an attempt at mediating between interests which are diametrically opposed.
- From a landscape perspective, the impact is simply moving around the AONB as the polytunnels can be rotated around the farm holding.
- Whilst there is disappointment that reference to the AONB was removed from the Herefordshire Code of Practice (see 1.6 below), the standards of behaviour for the Code as a whole now match those previously set for the AONB.
- The polytunnel issue (along with wider plastic mulch which might in some settings have an equal landscape impact) will not go away. If the real controversy surrounds the ancillary development (such as the proposals at Brierley Court, Leominster<sup>18</sup>), then this is a matter for planning and will be dealt with accordingly.
- The two polytunnel enterprises in the AONB over a total of 350 acres (some 0.3% of the AONB). Whilst the overall impact is relatively limited, it is accepted that the polytunnels can be seen for considerable distances. There are areas of more extensive polytunnels elsewhere in Herefordshire (notably examples at Brierley Court (currently awaiting Planning Inspector’s decision) and Wickton near Leominster, which lie outside areas of protected landscape.

*Planning Matters*

- Planning procedures have not been applied in this case because of the question of permanence. In summary, “planning permission only normally is required where

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<sup>18</sup> Where Herefordshire County Council is currently in a legal battle with S and A Produce over a polytunnel development which includes a purpose built village for 1,000 fruit pickers ([http://news.bbc.co.uk/2/hi/uk\\_news/England/hereford/worcs/3734157](http://news.bbc.co.uk/2/hi/uk_news/England/hereford/worcs/3734157))

the clear intention was for the polytunnels to remain in place for an indefinite period made possible by the method of growing. In other cases it would not be thought reasonable to require applications where the likely functional life of the polytunnel was six months or less repeated for two growing seasons in total”<sup>19</sup>.

- The Brinkman case is considered to not be material to the Herefordshire case by virtue of the lack of permanence of the fixtures (i.e. in the Brinkman case, crops were being grown on tables which in themselves were deemed permanent fixtures and thus constituted development). Equally, in the Herefordshire cases, poles are simply pushed into the ground and not concreted. Nevertheless, it is accepted there is significant investment in irrigation infrastructure associated with the Herefordshire enterprises (in the order of £5,000/acre), and that the time and labour required to erect and disassemble the polytunnels is significant.
- Even if polytunnels were brought under planning control, this does not mean that there will not be any, however undesirable they might be. The economic realities of living and working in the AONB have, to some degree, been accepted.
- No examples of visual impact assessments, as promoted in the Herefordshire Code of Practice, have been seen by the AONB officer.

#### *Mitigation Potential*

- There is limited mitigation potential for polytunnels, with some experiments having been carried out with non-reflective materials, but with disappointing results. Equally, the potential for screening is limited (Lombardy poplars being an obvious choice, but these taking decades to become effective and in doing so altering landscape character).

#### *The Prospects for Polytunnels*

- There is an impression that the market is now saturated and that a 30% reduction in cropping could be forthcoming. Farmers respond to market signals and polytunnels are the latest manifestation of this. Some 6/7 years ago, potatoes were in vogue, and the plastic mulching associated with this crop arguably had a greater landscape impact. Some farmers are experimenting with growing cherries and other stoned fruit under polytunnels. These crop over a longer cycle and could well generate issues associated with the balance between rotation and permanence.

## **4.3 Consistency of Decision Making in Planning**

The complexity of the decision-making process in the appeals arena reflects that at a more local level in respect of individual applications. The issue of consistency inevitably arises where matters of judgement (see section 3.4) have to be employed. It is around this particular problem that there is the most significant controversy, notably raised by the Campaign for Polytunnel Control, established to fight growing scale and density of polytunnels in the Wye Valley.

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<sup>19</sup> Herefordshire Polytunnel Review Working Group (2004) **Review of the Voluntary Code of Practice for the Temporary Agricultural Use of Polytunnels in Herefordshire** para.6.1.7

Subtle variations in local policy, case-by-case decision making and interpretation of precedent (as expressed through appeals, for instance) inevitably produces apparent inconsistencies in the way in which planning decisions are arrived at. This holds for any type of development, made more complex where agricultural operations which benefit from permitted development rights are introduced. In addition, it appears in the case of polytunnels that precedent set through the Brinkman appeal, for example, which determined that the significant scale of polytunnels meant that they constituted development and as such required planning permission. However, local planning cultures (reflected in subtle but significant variations in development plan policies) means that contrasting interpretations of the visual impact of ‘development’ can occur, or indeed whether certain operations indeed constitute development.

## 4.4 The Development of Codes of Practice

In an attempt to pre-empt and mitigate the controversy associated with polytunnels in certain parts of the country, two Codes of Practice for polytunnel use have been drawn up (see Appendix F for more detail):

1. The Herefordshire Code of Practice for the Temporary Use of Polytunnels, prepared by Herefordshire Council, adopted in 2004.
2. The NFU/British Summer Fruits Association Code of Practice for the use of Polytunnels for the Production of Soft Fruit.

These set out planning related issues which acknowledge that polytunnels are a contentious issue, particularly in areas of high visual sensitivity, but there are a range of measures which can be employed to adequately gauge any significant impacts and address them. These include the completion of a checklist for submission to the Local Planning Authority and, in the case of the national guidance, preparation of a landscape impact map that shows areas of intended polytunnel operations and indicating measures have been taken to mitigate the impact of polytunnels on the local landscape. However, well intentioned the Codes, they are voluntary and do not address the fundamental issue of whether large-scale polytunnels, *as a matter of fact*, constitute development (by virtue of size, permanence and physical attachment).

Intriguingly, in the Herefordshire case as part of the approval of the revised Code (October 2004) all references to AONBs were removed on the instruction of the Cabinet (14 October 2004). However, the need for special consideration of the qualities of AONBs remains in the National Code. Fundamentally there is no statutory requirement to comply with the Codes and therefore the opposing arguments in Herefordshire call for an amendment to planning policy to bring polytunnels under the scope of its control. However, recent ministerial statements (see **Section 3.7**) make it is clear that the Government has no intention to do this.

## 4.5 The Wider Effects of Polytunnel Development: A Balance Sheet Analysis

The impacts of polytunnel development potentially extend beyond immediate visual or environmental considerations. A fundamental rationale for polytunnels is the economic benefit, for farmers, to be derived from their use, enabling the production of high value added products. Appendix A demonstrates the increasing economic importance of the growing of soft fruit, both

in absolute terms and a respect of other crops. However, protected landscapes are an important focus for tourism and other leisure visits, bringing income to the wider rural economy. The visual impact of extensive polytunnel use could prove detrimental to these interests. A balance sheet analysis of the economic and wider relationship between agriculture and other interests could be undertaken to establish the relative contribution of each to the local economy. Box 4.1 sets out the components of a balance sheet analysis which could explore how such a study might be structured. It is estimated that this study would cost in the region of £20,000.

**Aim:**  
To establish the costs and benefits associated with large-scale polytunnel development in a protected landscape

**Box 4.1 Suggested Components of a Balance Sheet Analysis of the Impact of Polytunnels on a Protected Landscape**

**Objectives:**

1. to determine the contribution of agriculture and tourism to a locality
2. to determine the economic benefits for agriculture attributable to polytunnel use
3. to determine the tourism uplift attributable to the presence of a protected landscape, without polytunnels

**Method:**

- Literature review
- Establish economic baseline for both Tourism and Agriculture (specifically horticulture and polytunnels) – ONS, local authorities etc.
- Survey tourist authorities/boards/local authority tourism departments applicable to AONBs.
- Perform a 'balance sheet' analysis using figures identified, interpolating where appropriate.

**Key Study Considerations:**  
  
**AGRICULTURE:**

1. Economic uplift attributable to polytunnels – production, labour force etc
2. National vs. local benefit
3. Growth potential
4. Contribution of polytunnels to local rural economy.

  
**LEISURE AND TOURISM:**

1. Actual and potential leisure and tourism uplift attributable to AONB designation. Establish the baseline position: GDP, trends, number of tourists, number of employees, role in rural economies and visitor surveys of reasons for visits.
2. Is the attractiveness of the AONB based purely on visual quality? Landscape may be just one factor. There are wider considerations such as: season/weather, choice (competing locations) and state of the economy.
3. Indicators of the impacts of polytunnel development in AONBs:
  - Number of visitors
  - Number of return bookings recorded by B and Bs, hotels, guest houses etc
  - People active in local tourist economy
  - Day trip vs. Overnight stays
4. Growth potential
5. Market niches

**Outputs:**

- An understanding of the economic connections between tourism and protected landscapes.
- Identification of the relative contribution of tourism and agriculture to a locality.
- Determination of the direct and indirect impacts of large-scale polytunnel development.



## 5. Key Issues and Recommendations

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### 5.1 Polytunnels in AONBs

#### 5.1.1 Introduction

This review of the current state of polytunnel activity and treatment by the planning system in England has revealed a significant diversity and perhaps even confusion as how such examples of change are dealt with. This section presents the key issues identified through the research and analysis, summarising the apparent ambiguous state of the exercise of planning judgement and offering recommendations for the Countryside Agency and their partners to help mitigate the more significant effects of polytunnels as they evolve in use, along with suggestions for introducing consistency in how such matters are dealt with at the local level. The centrepiece of this is a practice note for planners consisting of key issues to be considered and a flow chart which sets out the idealised sequence of development control practice.

#### 5.1.2 Key Issues and Recommendations

##### Principles

- In themselves, polytunnels are not necessarily a ‘problem’. Difficulties arise in respect of the confluence and interaction of their: scale, siting, cumulative impact, location (in sensitive areas), and associated development. The net effect of the interplay of these factors has been the despoilation of the visual quality of *some* AONBs, and in the eyes of some the issue has been dealt with unsatisfactorily by the planning system.
- Protected landscapes, by definition, should be accorded special treatment, although balancing the demands of a designated landscape with demonstrable need is difficult and needs to be undertaken on a case-by-case basis. AONBs are working landscapes which, to some extent, have to deal with challenges to their established character and function. These include changes to agricultural land uses and practices.
- All public bodies, by virtue of Section 85 of the Countryside and Rights of Way Act 2000, have a duty of regard for the primary purposes of AONBs.
- Professional judgement and recommendations from planners, based on legislation and case law, and decisions made by planning committee members is at the heart of the consideration of whether activities require planning permission.

##### Polytunnel Development

- In terms of pressure for the use of polytunnels, there appears to be no immediate difference inside or outside AONBs.

- Scale and cumulative impact of are particular concerns within AONBs, where landscape capacity to absorb change is commensurately lower than less visually sensitive landscapes. By virtue of the recognition of these qualities through designation, there is a strong argument that they should be treated differently from 'ordinary' landscapes. Evidence from appeal decisions suggests that the status of AONBs has been a significant material consideration and decisions.
- There are legitimate concerns that experience to date is the start of a more significant emerging issue and that pressures for development are likely to intensify.
- Considerable controversy has been generated by specific cases (notably in Herefordshire) but the planning merits, or otherwise, of the actual polytunnel structures are often 'muddled' by ancillary development issues.
- The use of plastic or fleece mulching (for potatoes, for instance) can have a similarly significant visual impact as polytunnels, although there is no question of this type of operation being considered under the planning system.
- Environmental issues, apart from visual impacts, lie beyond the scope of this study and would demand extensive, field-based appraisal, exploring such issues as:
  - The local environmental impacts of plastic sheeting;
  - Soil sterilisation;
  - Water run-off; and
  - Biodiversity.

### **Exercising Planning Judgement**

- As a wider issue, polytunnel development appears far more diffuse, and evidence from local authorities and appeals suggests that a case-by-case approach is being, and has to be, applied. Whether this approach is sufficiently robust to deal with increased pressures (either by scale or cumulative impact) is open to speculation.
- The central question of this particular study thus becomes: are polytunnels (apart from any associated development) of a sufficiently different scale and impact such that they compromise the integrity of an AONB/NP and thus demand special attention?
- There remains scope for interpretation as to whether polytunnels constitute operational development. Typically, where agricultural operations are involved, the planning system may not be engaged, with polytunnels treated in a similar fashion to polythene mulching (which arguably has equally significant landscape impacts). The tests of size, permanency and method of fixing apply where the planning system is engaged.
- Examples of polytunnels at a significant scale examined through this research, notably that of Tuesley Farm, Waverley, can be taken as constituting development, i.e. they are essentially permanent, fixed and substantial in size. In such cases, the GPDO would not apply (which allows for the consideration of siting, design and



appearance as part of a prior approval process) thus requiring full planning application.

- Issues such as agricultural need (as suggested in the Nathaniel Lichfield report) could be taken into account through consideration of Whole Farm Plans, for instance. This would help to balance the range of material considerations which apply.<sup>20</sup>
- It is a judgement of the local planning authority as to whether the planning system should be invoked, and where certain agricultural operations are deemed to be development, subjecting them to tests which apply under PDR (size, permanence and method of fixing).
- There are apparent inconsistencies in the way in which local planning authorities are judging whether polytunnels require planning permission, fall under PDR, or should be treated as purely agricultural operations. However, the special qualities of AONBs are consistently cited as the key issue upon which applications are appraised. This issue is heightened by uncertainties over enforcement.
- Central Government, via two planning ministers, have recently (July 2005) made their views clear that the planning system has all the powers it needs to deal with any planning problems raised by polytunnels. Nevertheless, there appears to be varying interpretation of the 'rules', particularly in the professional judgement of issues such as scale, permanency and need.
- For permitted development, siting, design and appearance can be taken into account through the prior approval process for permitted development set out in the GPDO for Class A units (i.e. on farms of more than five hectares). A critical point to note is that if a polytunnel is not considered as a 'building or structure' or 'building operation', and thus development, then it will not be followed through to these potential controls. One of the issues noted in the research and survey work is that in some cases polytunnels are not considered development by local planning authorities in the first place and therefore not subject to any planning controls whatsoever via the GPDO or through formal planning applications.
- For all Class A permitted developments considered as the erection of a new building the prior approval process set out in the GPDO comes into force, with extensions and alterations only requiring prior approval in National Parks (Article 1(6)) land. It would potentially be useful to consider Article 1(5) land (National Parks, AONBs and Conservation Areas) under this section of the GPDO to afford a similar level of control to Class A permitted development for extensions or alterations in these areas as to not to undermine the statutory purpose of such land.

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<sup>20</sup> "The benefits of a whole farm plan from the perspective of the planning authority is that it allows individual planning proposals to be seen within the context of the long term proposals for the farm. Whole farm plans therefore provide a mechanism for helping justify development proposals, allowing planning advice to be seen in a broader context." at: [http://www.defra.gov.uk/science/Project\\_Data/DocumentLibrary/RE0119/RE0119\\_1840\\_FRP.doc](http://www.defra.gov.uk/science/Project_Data/DocumentLibrary/RE0119/RE0119_1840_FRP.doc)

### Recommendations for the Countryside Agency and Partners

- Accept that the polytunnel issue is a locally significant one which is likely to grow as farming economics undergo further re-adjustment.
- Accept that the planning system is charged with assessing the merits of polytunnel applications and through national guidance (notably recently provided by planning ministers) and the procedures laid out in the Planning Act, a suitable framework exists for case-by-case appraisal.
- Recognise that the Codes of Practice developed in Herefordshire and nationally represent an important first step toward meeting farmers 'halfway'. However, notwithstanding their good intentions, there is significant potential for the refinement of the code, particularly in terms of the appraisal of visual impact, and its publicising amongst other Local Planning Authorities.
- Develop a practice note for development control planners which builds on the Codes of Practice but which is specifically aligned to the requirements of AONBs in respect of the protection of visual quality (see box below). This includes, importantly, a reminder of the duty of care of local planning authorities toward the special qualities of protected landscapes (as set out in Section 85 of the Countryside and Rights of Way Act 2000 and statutory AONB Management Plans). This could extend to advice on the preparation of Supplementary Planning Documents (SPD).
- Work with partner agencies to appraise the cumulative environmental impact of polytunnel development, either at a field or farm-scale.
- Keep a watching brief on the emergence of polytunnel developments through the established network of AONB Officers. This could be through an email circular, for instance.
- Keep a watching brief on key appeal cases which will test planning law and the balance of issues considered. The cases in Herefordshire (Brierley Hill) and Waverley (decision reported December 2005, summarised in **Appendix J**)<sup>21</sup> could be of particular interest (notwithstanding the fact these lie outside AONBs).
- Ensure that AONB officers are fully appraised of the planning facts, via the proposed flowchart and current practice, including case law. Current cases could be reported back to a central 'database'.
- Investigate in detail cases of apparent inconsistent judgement amongst planning authorities regarding the interpretations and applications of the tests of size, permanency and method of fixing.

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<sup>21</sup> Hall Hunter Partnership v. Waverley Borough Council is available at:

<http://waverweb.waverley.gov.uk:8080/live/wbc/pressrel.nsf/86ab9805fc3ebfa90025667c005cef03/617813782c690351802570dc0056275c?OpenDocument>

- Seek clarification with ODPM that the protection of the visual quality of AONBs is a prime objective, and is a material consideration which applies to agricultural operations and development. This could be allied to the production of a guidance note for local planning authorities which draws from an updated Annex E of PPG7 and any review of Part 6 of the GPDO relating to the prior approval process.
- Submit representations on any ODPM consultation on reviews of Annex E of PPG7 or the GPDO (see section 3.5 of this report).
- Press for the submission of landscape impact assessments for all proposed developments within and adjacent to AONBs. Techniques developed for landscape Character Assessment can assist this process, particularly through its scrutiny of the inherent characteristics of a particular landscape, and the associated qualities of sensitivity. This is, in turn, related to the type of change proposed. Existing County or district-wide landscape character assessments can be used as a starting point for this exercise.

**A Practice Note for Appraising Polytunnels in and around Visually Sensitive Landscapes (see also accompanying flowchart)**

- **The Special qualities of designated landscapes**

Local Planning Authorities have a duty of care to protect and enhance Areas of Outstanding Natural Beauty. Have the special landscape qualities been used as a starting point for consideration of polytunnel issues?

- **Agricultural operations**

In principle, where polytunnel frames are pushed into the ground, they are deemed agricultural operations. The use of more permanent fixtures would be development and subject to scrutiny under PDR and thereafter consideration as development. Has this sequential test been applied?

- **Application and potential suspension of PDR**

Is there a case for suspension of PDR by virtue of size, permanence or method of fixing?

- **Scale and Cumulative impacts**

Notwithstanding the merits or otherwise of a particular case, could the scale and cumulative impact of a polytunnel 'development' compromise the integrity of an AONB such that issues of permanence and method of fixing are of lesser importance?

- **Pre-development/application discussions**

Can potential negative impacts be avoided through early discussions?

- **Use of landscape impact assessments**

Can a landscape impact assessment be prepared, perhaps in conjunction with the AONB officer?

- **Effective use of conditions**

Can conditions such as screening and seasonal/temporary use mitigate any adverse impacts?

- **Enforcement action**

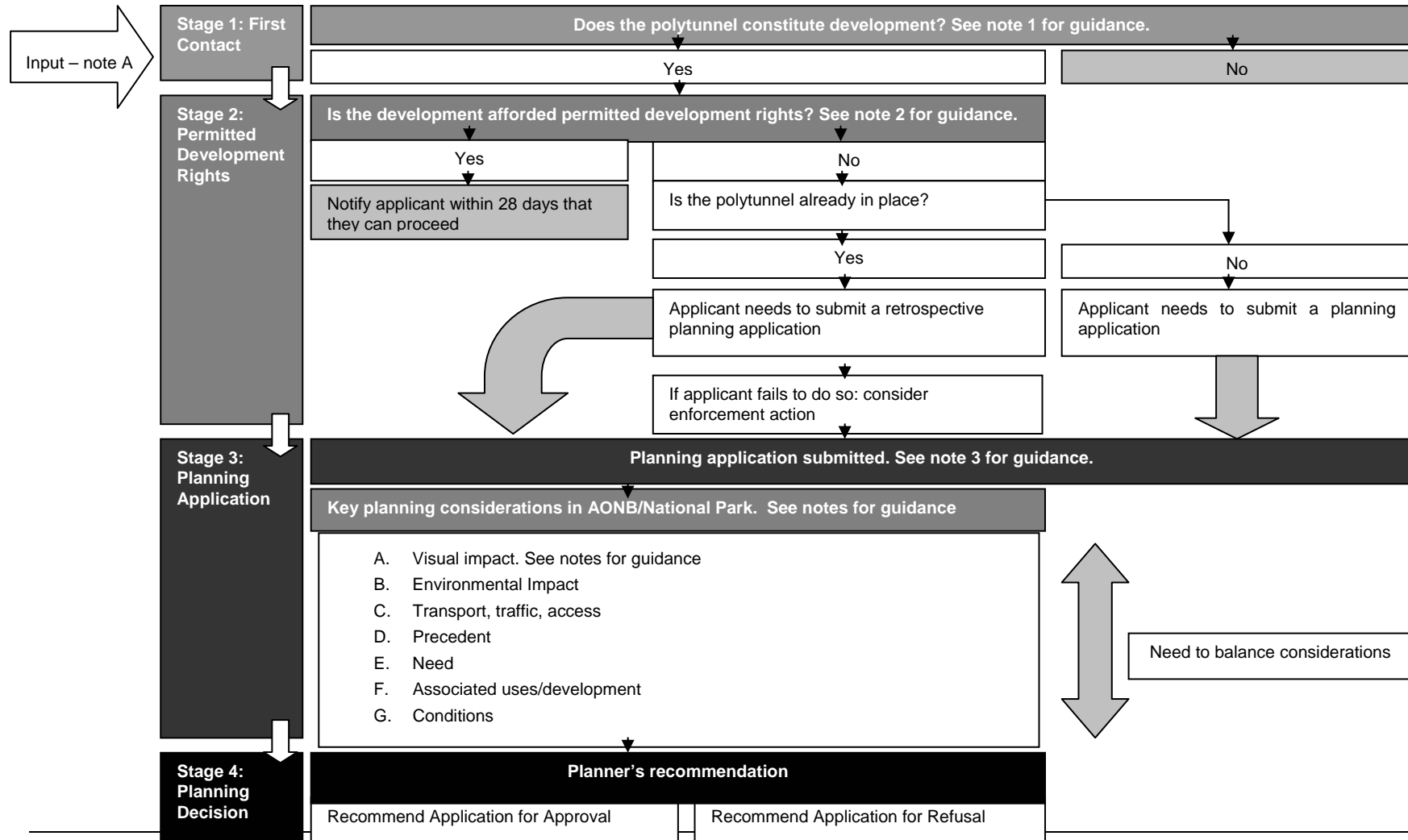
Are opportunities for effective enforcement being applied?

- **Polytunnels and associated development**

Have operations associated with polytunnel use (i.e. those falling outside PDR) occurred?

The flow chart and accompanying note on the following pages seek to simplify the whole process in terms of how polytunnels are, in theory, dealt with in the planning system.

**Figure 5.1** Flowchart of Planning Process with respect to Polytunnels



## SUMMARY NOTE ACCOMPANYING FLOWCHART OF PLANNING PROCESS

**Input – note A:** Polytunnel first comes to the attention of the Council through an objection to an existing one or inquiry from someone wishing to erect one. This is essentially reactive rather than proactive.

### Stage 1: First Contact

1. Does the development constitute development?

- Definition of 'development' in Town and Country Planning Act 1990 –
  - "the carrying out of building, mining or other operations in, on, over or under land, or the making of any material change of use of any buildings or other land"
- Is it a building/building operation?
  - 3 tests – size, permanence and physical attachment.
  - See Court rulings and appeal decisions, e.g. *Hall-Hunter Partnership v. Waverley Borough Council*; *Skerrit of Nottingham Limited v. Secretary of State for the Environment, Transport and the Regions* and *Harrow London Borough Council and Brinkman Brothers Ltd v. Chichester District Council*.

**[SEE ALSO FIGURE 3.1]**

### Stage 2: Permitted Development Rights (PDR)

2. Is the development afforded PDR under the provisions of the GPDO?

- See Schedule 1, Part 6 and 7 of GPDO.
- Further guidance is in Annex E of PPG/PPS7.

The GPDO prescribes limitations to the extent of the permitted development rights afforded to agricultural proposals. Notification requirements are also set. Under the provisions of the GPDO the applicant is required to notify the Council for certain developments. The Council has to respond within 28 days stating if the proposal is permitted development, or if a planning application is required. The trigger for the implementation of the GPDO essentially comes down to whether the proposal is considered as a building (or structure) or operational development.

### Stage 3: Planning Application

3. Planning application submitted

In determining planning application there is a need to balance a number of considerations.

- A. Visual impact on AONB/National Park – the weight to be given to visual impact considerations. There is a general theme from recent appeal decisions to reject polytunnels if they are seen as visually intrusive/detrimental to the character of the designation. This is generally given more weight than other (for example, economic) considerations. The cumulative impact of many smaller tunnels may need to be considered. Potential for requiring a landscape character/impact assessment.
- B. Environmental Impact – considerations such as increased surface run-off, soil sterilisation and loss of habitats for example.
- C. Transport, traffic and access – considerations such as a potential increase in transport volumes to and from the site and any access issues (narrow country lanes for example).
- D. Precedent – see recent appeal decisions and other examples of similar planning applications within the local planning authorities remit.
- E. A question of need – is agricultural need demonstrated? If so it may still be outweighed by visual impact considerations as illustrated in recent appeals.
- F. Associated uses – is the polytunnel/s the main use or will there be other considerations (for example temporary accommodation for workers)? These other uses may be more of an issue than the polytunnels themselves.
- G. Use of conditions – screening of a polytunnel to reduce visual intrusiveness or restrictions on length of time the tunnel is in place for example.

**Stage 4: Planning Decision:** This is ultimately the respective Planner's judgement based on consideration of all of the factors in Stage 3.



# Appendix A

## Economic Overview: Horticulture in the UK

2 Pages

The tables below demonstrate the breakdown of horticultural production by area, volume and the amount of crops grown under protection looking at horticulture as a whole, and then specifically soft fruits.

**Table 1: Planted area and value by crop type**

Crop		Planted Area (hectares)			Value of home production marketed (£ '000)		
		1994	2004	Difference 94-04	1994/95	2004/05	Difference 94-04
Vegetables	Field	154,669	123,527	-31,142	684,335	707,568	+23,233
	Protected	1,928	749	-1,179	313,668	229,709	-83,959
	Total	156,597	124,276	-32,321	998,002	937,277	-60,725
Fruit	Field	36,118	26,612	-9,506	246,621	285,811	+39,190
	Protected	43	143	+100	3,196	32,796	+29,600
	Total	36,160	26,755	-9,405	249,817	318,607	+68,790
Ornamentals	Field	14,282	16,288	+2,006	354,764	509,113	+154,349
	Protected	827	1,029	+202	250,130	287,075	+36,945
	Total	15,110	17,317	+2,207	604,895	796,188	+191,293
Flower and vegetable seeds		NA	NA	NA	7,208	6,516	-692
<b>Overall Total</b>		<b>207,867</b>	<b>168,348</b>	<b>-39,519</b>	<b>1,859,922</b>	<b>2,058,588</b>	<b>+198,666</b>

SOURCE: Defra (2005) Basic Horticulture Statistics

The total planted area of horticultural produce decreased in the period 1994 to 2004 by almost 40,000 hectares, with approximately 75% of this total area covered by vegetables and 16% with fruits as at 2004. Along with a decrease in the total area covered, there has also been a reduction in home production marketed (HPM - the volume of produce produced and sold in the UK). For vegetables the total volume of HPM has reduced from 3,145 thousand tonnes to 2,656 thousand tonnes, 77% to 62% as a proportion of total supply. For fruit the total volume of HPM has reduced from 438 thousand to 332 thousand tonnes, 16% to 9.8% as a proportion of total supply. This would be expected - the total area covered by crops reduces in line with a reduction in the volume of production. However, over the same period the total value of HPM for all horticultural produce has increased by approximately £198,666 as demonstrated in Table 1.



It is interesting to look at these figures in more detail with respect to soft fruits as part of the overall fruit sector since this is the area where polytunnels are seen to be used the most.

**Table 2: Soft fruits by area and volume of production**

Soft Fruit	Area (hectares)			Production (000s tonnes)		
	1994/95	2004/05	Difference 94-04	1994/95	2004/05	Difference 94-04
Strawberries	4,611	3,299	-1,312	38.3	47.9	+9.6
Raspberries	2,645	1,505	-1,140	12.5	10.7	-1.8
Blackcurrants	2,624	2,987	+363	19	19.3	+0.3
Other soft fruit	1,022	753	-269	6.8	5.1	-1.7
<b>Total</b>	<b>10,957</b>	<b>8,544</b>	<b>-2,413</b>	<b>76.6</b>	<b>83</b>	<b>+6.4</b>

SOURCE: Defra (2005) Basic Horticulture Statistics

Soft fruits make up almost one third of the total land area covered by fruits overall, the total planted area has decreased from 10,957 to 8,544 hectares between 1994 and 2004 (Table 2), most significantly in terms of strawberries. Although the total land area covered by soft fruits has decreased by 2,413 hectares, total production has increased by a net of approximately 6,400 tonnes. The most significant increase is in strawberry production which has increased by 25% from 1994 to 2004, even though this is the area with the most significant decline in terms of planted area. One potential explanation for this could be an increased use of protective 'glasshouse' environments such as polytunnels.

Looking at Defra's figures it is clear that the total land area covered by horticultural crops has decreased but there has been an increase in the protected planted area for both fruits and vegetables. Soft fruit production has increased by 6.4 thousand tonnes since 1994 even though the overall area covered has decreased by 2,413 hectares. Referring to strawberries as the main example, since 1994 the planted area for strawberries has decreased more than all of the other soft fruits, seen the largest relative increase in volume of production and there is evidence to suggest that the use of protective environments such as polytunnels has increased. This lends support to the argument that polytunnel use has been increasing, and the impacts that it has had on increasing efficiency - through a greater volume of produce from less land. This is simplistic argument and is not examined in depth in this report - since a whole study could be undertaken to investigate this - but it provides some background to the context for polytunnel use in the UK.

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# Appendix B

## Summary of Survey Results

2 Pages

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### **Local authority survey**

A total of 299 questionnaires were distributed to local authorities across England, with only a few metropolitan boroughs, with no agricultural land, being excluded. As of the 8 August 2005 100 responses, a third of all local authorities questioned, were returned. The spatial coverage of the responses received is shown in Figure C1. This figure demonstrates a good coverage of respondents throughout England.

### **Where have respondents dealt with polytunnels and in what capacity?**

A majority of respondents (72%) have dealt with the issue of polytunnels. This includes respondents who have dealt with applications (32%) and those respondents who both provided advice and dealt with applications (31%). A total of 44% have provided advice and only 12% have dealt with polytunnels through enforcement action. Those who have not dealt with polytunnels account for 28% of all respondents. Figure C2 illustrates the geographical spread of those respondents who have dealt with polytunnels and those that have not.

For National Parks, three respondents had dealt with the issue of polytunnels through applications, one through advice and enforcement action, one via advice and application and one dealt with the full suite (applications, advice and enforcement action).

Some local authorities may have stated have not dealt with polytunnels as they were considered 'permitted development' and therefore not dealt within in the planning process. However, if this were the case, the local authority should have at least been notified of the development.

From analysis by eye, there does not appear to be any obvious correlation between those local authorities that have dealt with the polytunnels and the location of designated landscapes. However, there are a number of local authorities who have undertaken enforcement action on polytunnels which are located either within or adjacent to designated landscapes (three quarters of local authorities who have dealt with polytunnels through enforcement action).

### **Has guidance/policy been produced on polytunnels?**

Almost all local authorities have not prepared guidance or developed policy specifically for polytunnels. In the small number of cases where policy was developed it was mainly for agricultural buildings in general rather than specifically polytunnels. The only case where polytunnel specific guidance has produced is in Herefordshire.

This does not necessarily indicate an omission by local authorities but may rather indicate polytunnels are may be too specific an issue to address directly or are yet to become an issue for local authorities. It may also reflect the fact that where polytunnels have become an issue, due the extent and volume of development, guidance is prepared accordingly as in Herefordshire.

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### **Do polytunnels fall under PDR or do they require planning permission?**

Out of the 100 responses received 49% felt polytunnels fell under PDR, 24% felt they required planning permission whilst 20% felt polytunnels could fall under both. Similar responses were received from National parks with 25% feeling polytunnels fell under PDR, 38% felt they required planning permission with one respondent feeling polytunnels fall under both.

Of those that stated 'both' a number of respondents stated it was dependent upon whether or not the polytunnels accords with GPDO tolerances, such as size.

Some respondent that stated polytunnels fell under PDR cited the GPDO as explanation. Some also stated the polytunnels must be for agricultural use and would only fall under PDR if they were not permanently fixed to the ground.

Some of those who stated polytunnels required planning permission attributed this decision due to the size of the development.

It is obvious that there is significant variation in local authority's perceptions as to whether or not polytunnels require planning permission and there is often no clear answer. This variation is reflected throughout England as shown in Figure C3. Determination on whether or not polytunnels fall under PDR or require planning permission falls to the individual proposal in question.

### **What are the key development control issues associated with polytunnel development?**

Significant key issues associated with polytunnel development are:

- visual impact (86% with 66% identifying it as the top issue);
- development in open countryside (18%);
- development in green belt (15%);
- agricultural justification (13%);
- general justification (12%);
- diversification (12%); and
- economic issues (11%)

These findings demonstrate local authorities are highly aware of the visual impact of polytunnels and the effects of polytunnels on the openness of the countryside. Justification, specifically agricultural need, for polytunnels is also a significant issue.

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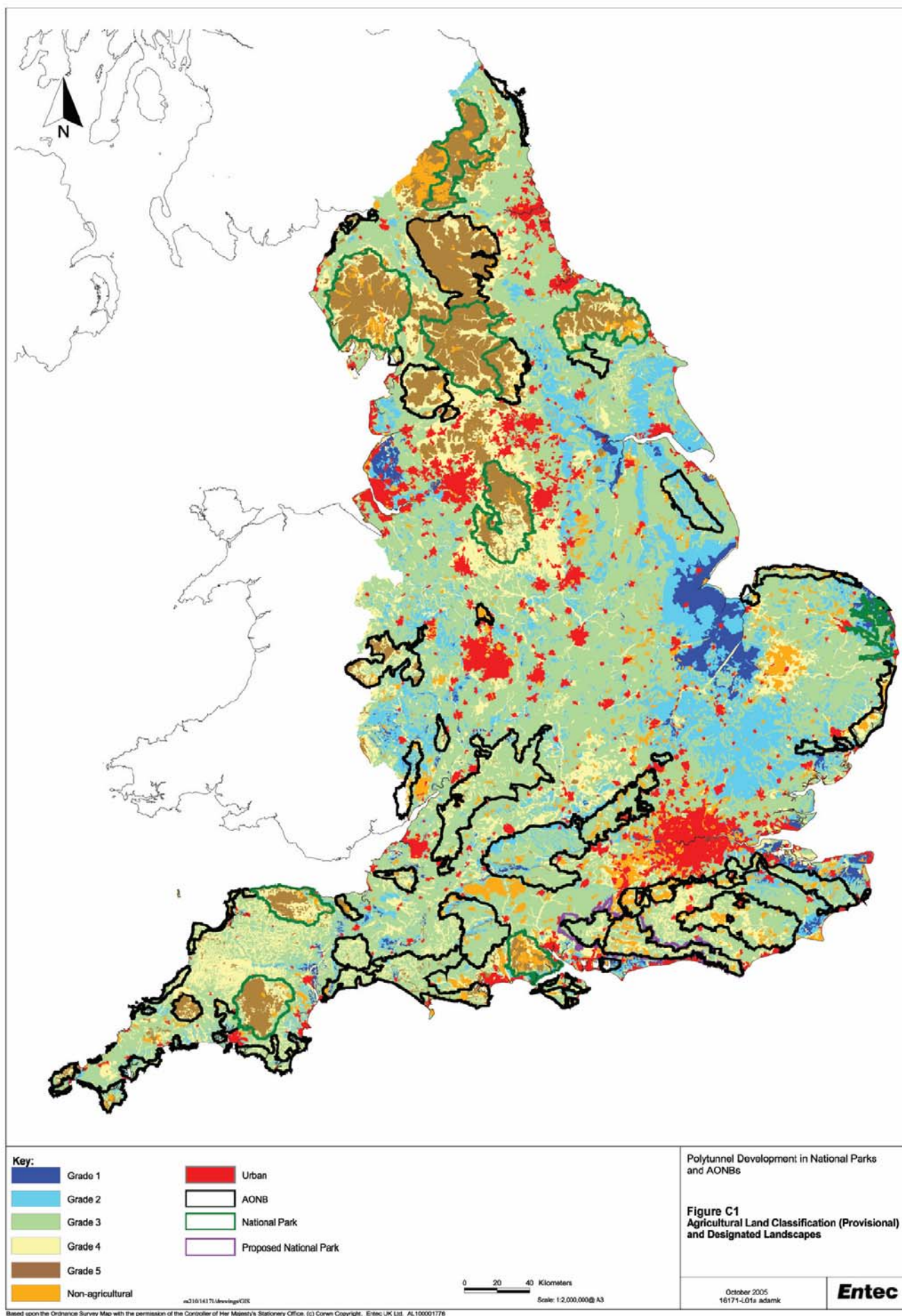
# **Appendix C**

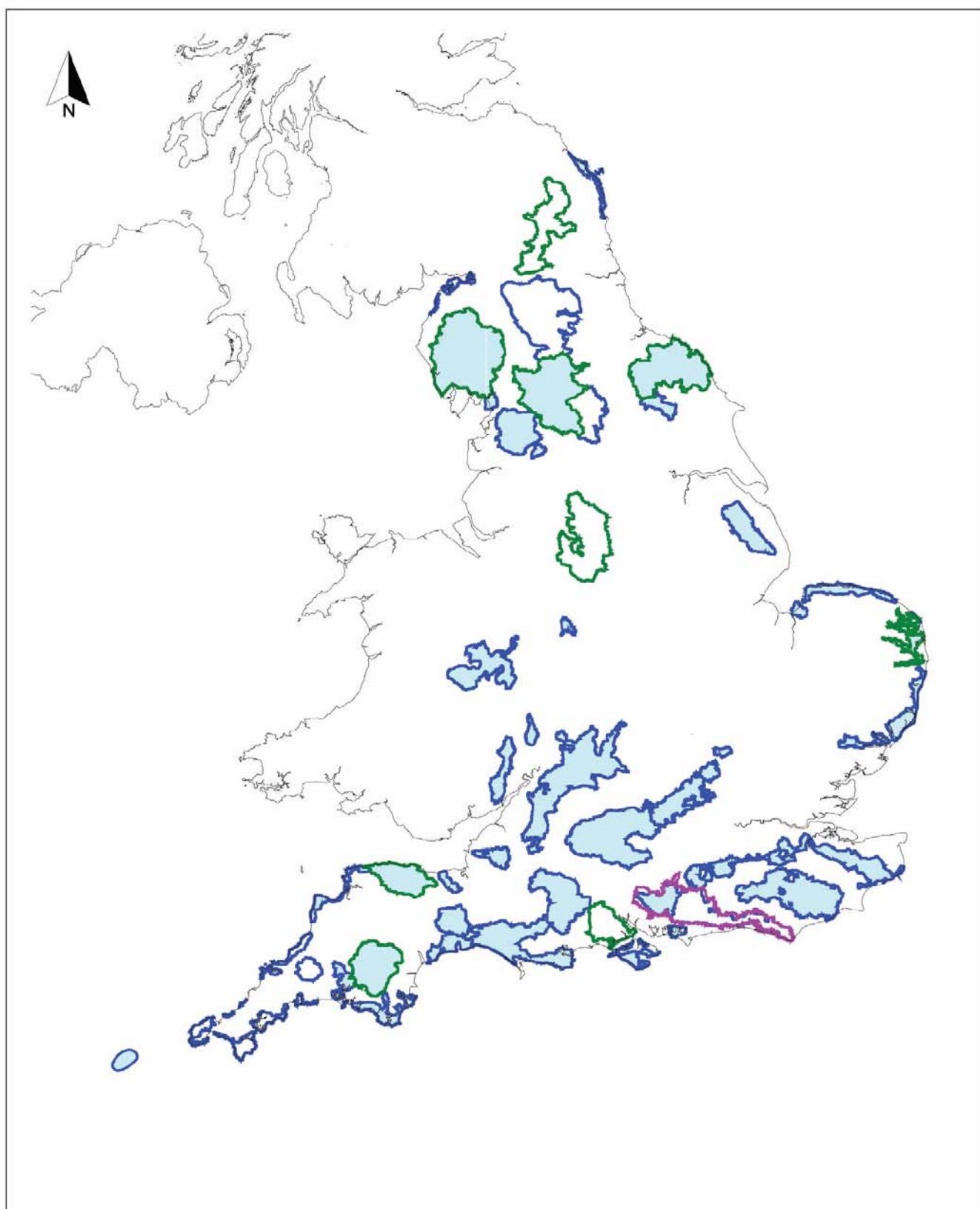
## **Maps of the Survey of Local Authorities, AONBs and National Parks and Example Photographs of Existing Developments**

10 Pages

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**Key:**

- Response received
- AONB
- National Park
- Proposed National Park

Polytunnel Development in National Parks and AONBs

**Figure C2**  
Responses received from  
designated landscapes

0 50 100 Kilometers  
Scale: 1:2,500,000 @ A3

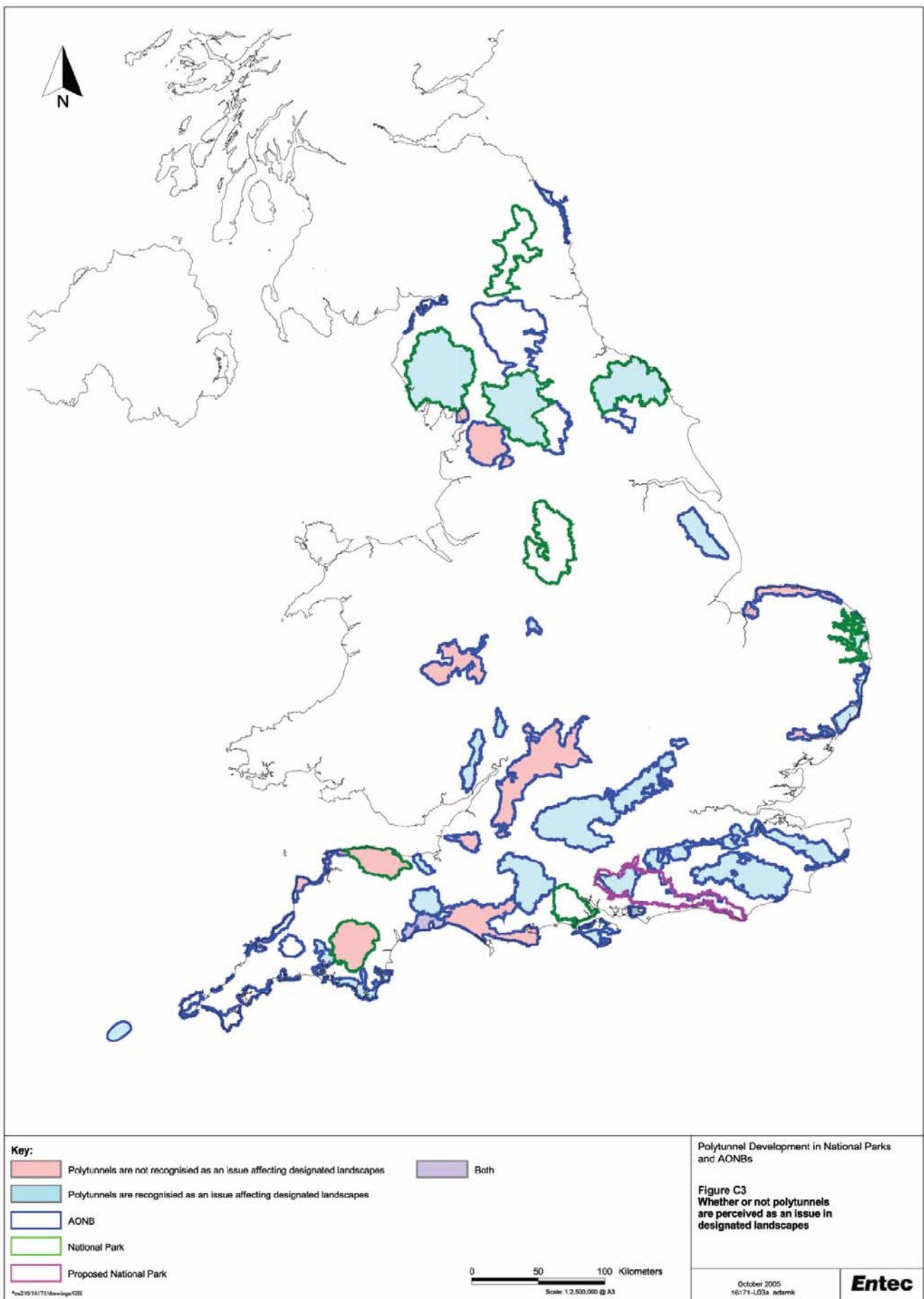
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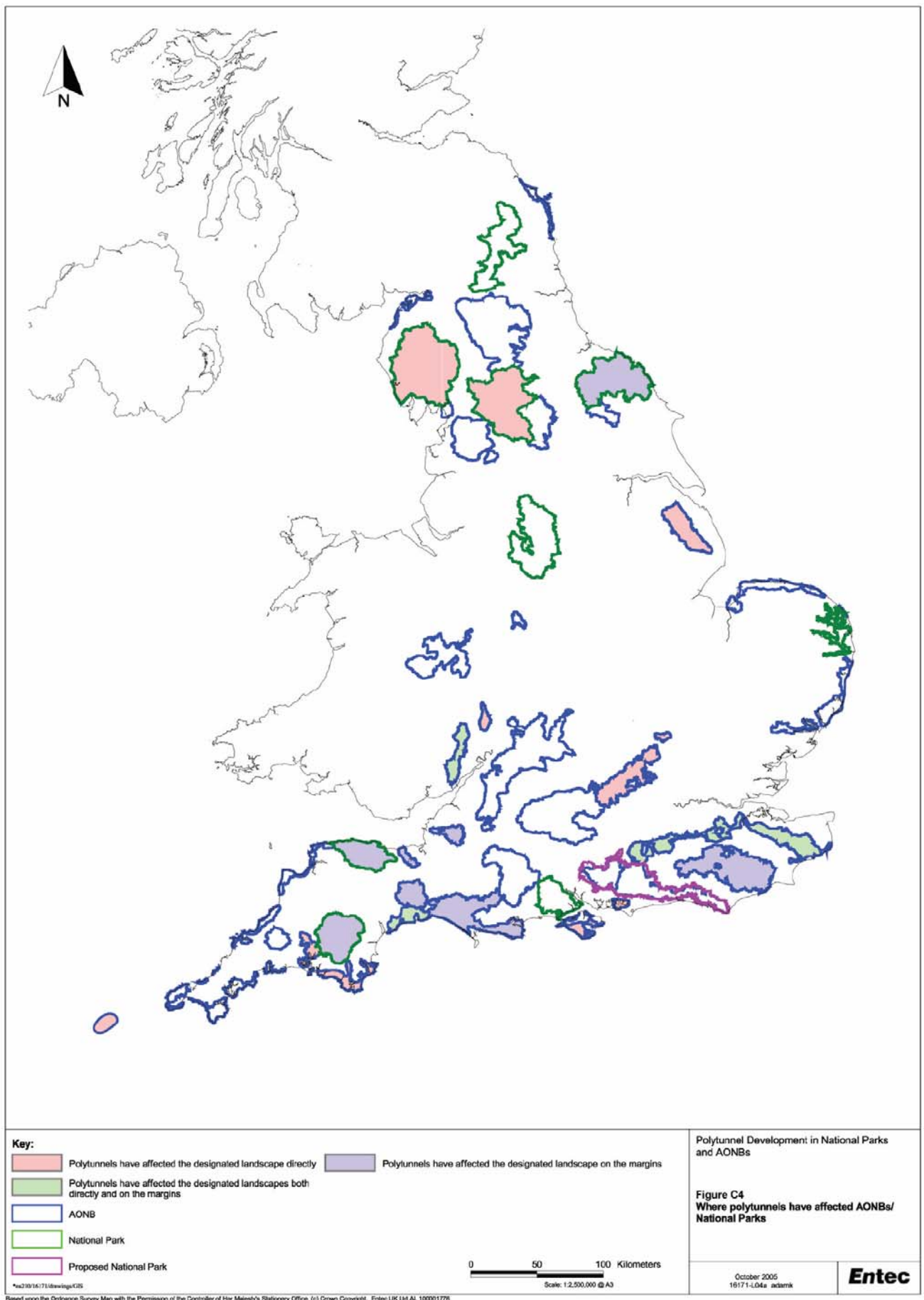
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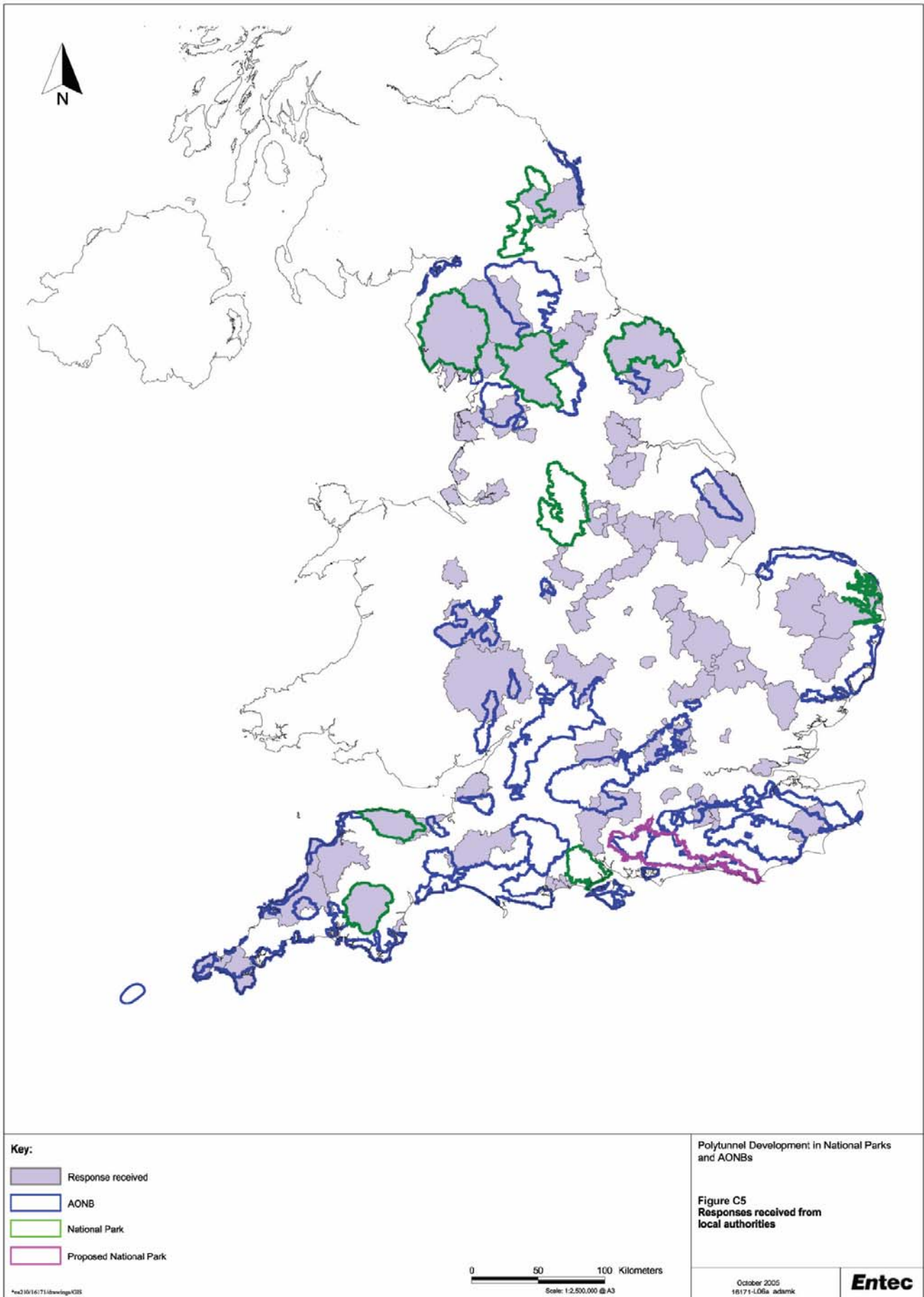
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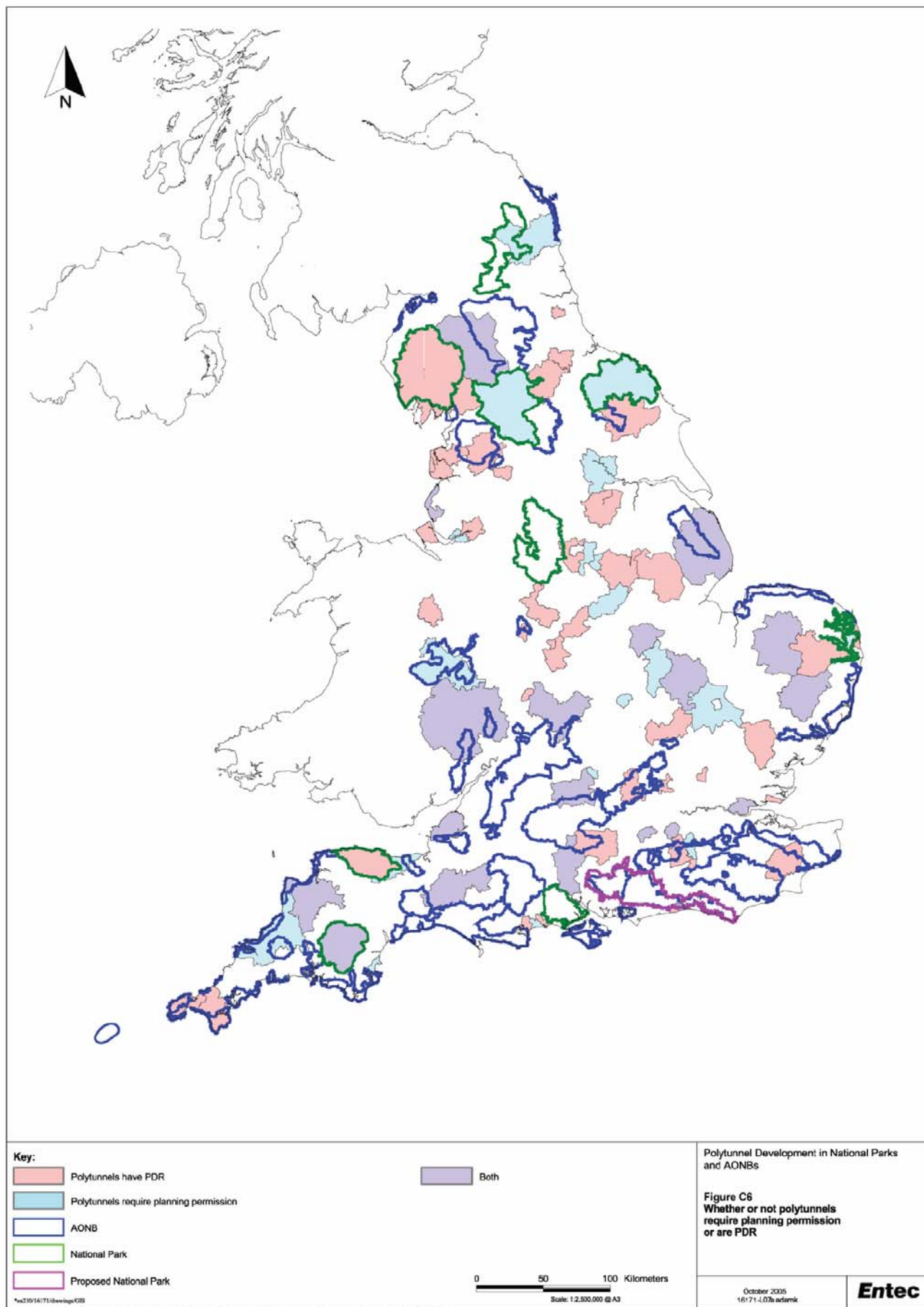


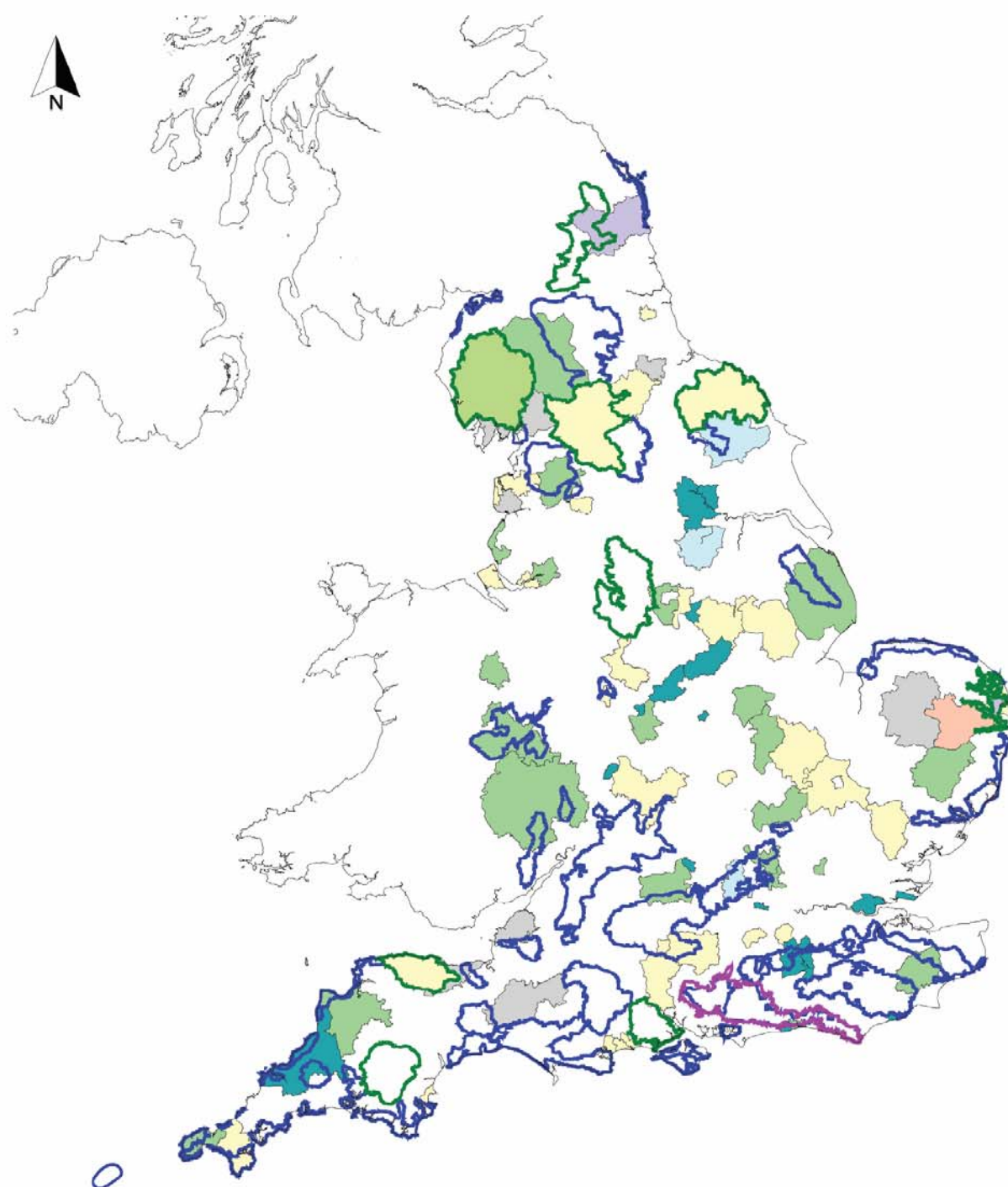












**Key:**

	AONB		action
	National Park		advice
	Proposed National Park		advice and action
			advice and application
			all three
			application
			application and action
			no

0 50 100 Kilometers  
Scale: 1:2,500,000 @ A3

Polytunnel Development in National Parks and AONBs

**Figure C7**  
Involvement in polytunnels

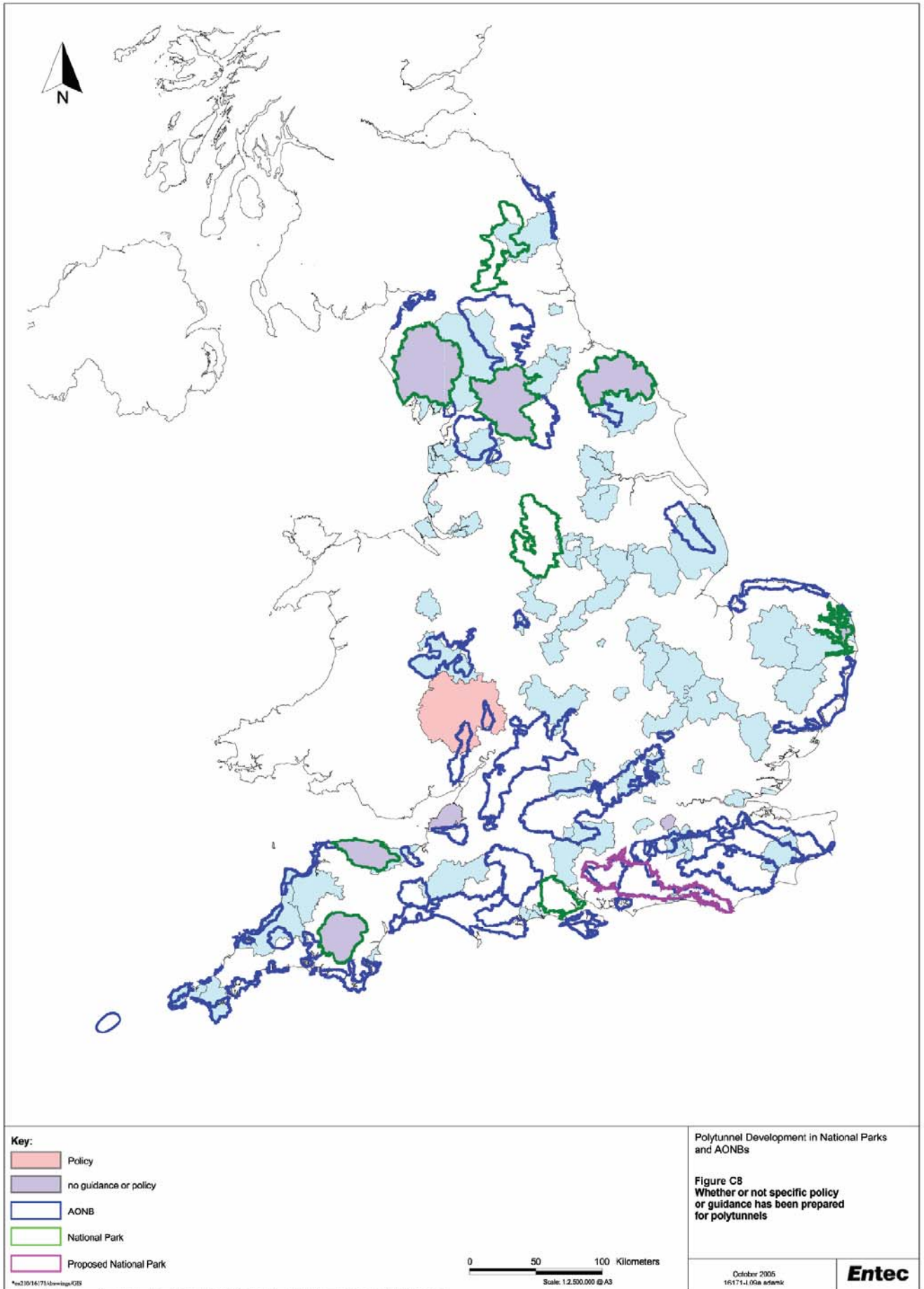
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**Entec**







**Arrow Valley,,Herefordshire**



**From Goodrich Castle, Ross-on-Wye**



**From Goodrich Castle, Ross-on-Wye**





**Kings Caple, Herefordshire**



**Kings Caple, Herefordshire**

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# Appendix D

## Polytunnels as operational development – policy overview

5 Pages

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### Are polytunnels a ‘building operation’?

Under the definition of building operations in the Act, it is not explicit whether or not erecting a polytunnel can be considered as a building operation. The Act identifies three tests that should be applied to determine whether a construction should be considered a building operation.

- 1. Size** – a building is normally something that is constructed on site as opposed to being brought already made.
- 2. Permanence** – a building or structure is denoted by a physical change of some permanence.
- 3. Physical attachment** – this is seen as inconclusive in itself, but can influence the other two factors one way or the other.

These three tests are interlinked and although not necessarily conclusive one way or the other give a good idea of the general considerations that need to be taken. There are many cases and appeal decisions relating to determining a building operation which demonstrate how the tests are applied and the complexities involved.

In terms of polytunnels, operational development is likely to be held to have taken place if the polytunnel is of substantial size, with supports fixed to the ground and therefore not readily mobile. This is demonstrated in the examples in Figure 3.1, demonstrating that in most cases, polytunnels are held to constitute operational development, with the justification for this.

To assist this interpretation further it is helpful to examine what the definition of a ‘building’ is and how this relates to polytunnels. Under s.336(1) of the Planning Act a building is defined as including “any structure or erection and any part of a building as so defined, but does not include plant or machinery comprised in a building”. This definition is of course linked with the definition of a building operation and the two interpretations with respect to polytunnels will be linked. Looking at the definition in its simplest form, a polytunnel can be seen as a building as “any structure or erection”.

### Polytunnels as Operational Development

Case/Example	Inspector's Decision	Key Points
1. Polytunnel and other structures constructed at an unauthorised stud farm. Wye Forest D.C. 6/7/93.	Operational Development	Polytunnel consisting of plastic spread over a metal frame with wooden supports and fixed to the ground was considered to be of substantial size and not readily mobile.
2. Polytunnel measuring 40' by 20' composed of hoops fixed to the ground in portable metal sockets. Canterbury	Operational Development	S.O.S noted that the substantial size of the tunnels and their manner of fixing meant that there would be a significant amount of work involved in their



Case/Example	Inspector's Decision	Key Points
City Council 18/10/85.		assembly, positioning, reassembly and repositioning. Poly tunnels need to be fixed securely to the ground and avoid them being blown down.
3. Enforcement action at two poly tunnels at a nursery. Perth and Kinross D.C. 22/6/92.	Operational Development	It was argued that the poly tunnels were prefabricated and therefore not development, but the local authority contended that the erection of a steel frame structure bedded in concrete was certainly a building operation. The decision concluded that the tunnels were substantial and permanent enough to be structures requiring planning permission.
4. Enforcement notice directed at a timber agricultural/stable building and a poly tunnel. West Dorset 5/10/93.	Operational Development	The poly tunnel consisted of a metal frame slotted into tubes which were sunk into the ground. The Inspector concluded that the degree of permanence and fixing consisted of operational development.
5. Enforcement notice against two netted tunnels. Tandridge D.C. 25/5/93.	Operational Development	The Inspector concluded that because the tunnels were erected on site as opposed to being transported to the site and placed on the land and when erected the framework was fixed into the earth and the netting over the frame is held down by earth.
6. Enforcement notice required the removal of poly tunnels at a 203 ha. salad and strawberry farm. Chichester D.C. 15/6/1999 DCS No. 33513087.	Operational Development	<p>Tunnels had a floor area of 2.67 ha and up to 4 m in height. Size and method of fixing to the ground (screwed in 0.6 m) meant that they were not considered temporary. Moreover, agricultural operations were a use of land rather than operational development and thus were not permitted.</p> <p>The visual impact was detrimental to an AONB and countryside and total removal was justified notwithstanding the potential economic implications associated with finding an alternative method of growing strawberries.</p>
7. Enforcement notice against poly tunnels, windbreaks, an earth bund and other works. Waverley Borough Council 15/12/05	Operational Development	The farm holding covers around 190ha, with cumulative poly tunnel coverage of 61ha and maximum coverage of 39ha. The Inspector concluded that by virtue of size, permanence and degree of attachment to the land, the poly tunnels constituted development, and that their cumulative impact would dominate and overwhelm the appearance of the open rural landscape, and would be out of place in terms of scale, height, form and appearance and failing to protect the openness and intrinsic qualities of the countryside and failing to protect its character.

SOURCE: Summary of cases provided in Development Control Practice.

### Planning Decisions on Operational Development

The following examples of case law and ministerial decisions add further detail to the decisions listed in Table 3.1, relating in particular to the application of the three tests of size, permanence and physical attachment to the land. It is clear however that each case will have to be judged on its merits, based on these cases.

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**Skerrit of Nottingham Limited v. Secretary of State for the Environment, Transport and the Regions and Harrow London Borough Council<sup>22</sup>**

This case law does not relate specifically to polytunnels, but to the dismissal of a marquee characterised by a metal frame covered with a plastic canvas and therefore shares similar traits with a polytunnel. This Case went to the Court of Appeal, where the appeal was dismissed on the grounds that even though the marquee was in place for 8 months of the year, that it constituted operational development and must be removed. This related to the three tests of size, permanence and method of fixing to the ground. It was argued that the marquee was an object of significant size, including seven bays, a storage area, toilet facilities, lighting and heating. It was assembled on-site and was not ready-made. Even though it was on-site for eight months of the year, the judgement was that it was not so transient to suggest that it was not permanent. It took days to erect and there was a significant degree of physical attachment to the land on which it stood.

The Court of Appeal held that the marquee was capable of constituting operational development.

**Brinkman Brothers Ltd. v Chichester District Council<sup>23</sup>**

An appeal against the refusal of planning permission for polytunnels to grow strawberries on a farm in Bosham, Chichester, was dismissed on the grounds that the erection was in breach of planning control. There were two polytunnels in question, comprising 22 bays with overall dimensions of 180 metres long and between 3.5 and 4 metres high. A further decision was made on a linked appeal that the development would be detrimental to the character and appearance of the area and its designation as an AONB (the site was within the Chichester Harbour AONB).

The Inspector stated that there is no doubt in his mind that the polytunnels cause considerable visual harm to the AONB, conflicting with the primary policy objective of protecting the landscape. The visual considerations and harm to the AONB were afforded the greatest weight in the Inspector's decision. This is therefore an important decision to note in the context of this project.

**Ministerial Planning Decision - North Norfolk District Council, 2004<sup>24</sup>**

This decision focuses on whether polytunnels (or 'growing tunnels' as defined in the text) constitute development as defined in the 1990 Act. Again, the decision focussed on their size, physical attachment to the land and degree of permanence. The decision was that operational development was due to have taken place due to the 'substantial proportions' of the tunnels in question, with the process of erection the tunnels amounting to a building operation.

Again, it will depend on the specifics of a particular case, but it is important to see a recent example of how a polytunnel has been determined in view of its status as operational development.

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<sup>22</sup> Court of Appeal, L.J., Schiemann L.J., March 22, 2000, Case Law Reports, 2000.

<sup>23</sup> Appeal: T/APP/X/98/L3815/003017/P6

<sup>24</sup> Journal of Planning and Environmental Law 2004, ref: 1723. APP/y2629/x/04/1142007

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### Does erecting polytunnels constitute a ‘material change of use’ of the land in question?

The Act sets out an approach to the consideration of a material change of use of land with questions that need to be addressed. It is recognised that the questions are not rigid and there will be overlaps.

- what is the primary use of the land?
- what is the scope of that use?
- what is the extent of any lawful ancillary use?
- what is the unit to which the primary use is attached?
- what is the **status in law of the use**: is it lawful by virtue of having been commenced with planning permission or before 1948; or by reason of the period allowed for taking enforcement action having expired without such action being taken or unlawful and open to enforcement action?
- is the change to a new use a material **change in the use of the planning unit**?

if so, is it nonetheless *excluded* by the Act as:

- use of land or buildings within the curtilage of a dwelling-house; or
- change to agricultural use; or
- change within a class defined by the Use Classes Order?
- alternatively, is it specifically *included* as:
- subdivision of a dwelling-house; or
- deposit of refuse or waste materials on land; or
- in Greater London only, change to use as temporary sleeping accommodation or timeshare/

if it is not excluded, does planning permission exist nonetheless for the change by virtue of:

- Part 3 of Schedule 2 to the GPDO, which allows use-changes between certain defined classes of the Use Classes Order;
- an enterprise zone scheme;
- a simplified planning zone scheme;
- a flexible planning permission; or
- a special development order.

The Act provides detailed considerations on each of the points above to determine whether or not a proposal constitutes a material change of use and thus development.

### Permitted development rights

Whether or not polytunnels constitute development is not the end of the discussion. If a polytunnel is considered to constitute development, then it can still be automatically granted

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planning permission under the provisions of the GPDO. Under the GPDO, certain proposals which constitute development as defined in the Act are granted planning permission. These are considered as ‘permitted development rights’. Permitted development rights under the GPDO are afforded to certain types of application within strict parameters for example for individuals wanting to extend or alter their house within certain limitations (for example small conservatories or porches). Critically, the GPDO states that permission is granted,

*“...for any specified building operations including works reasonably necessary for the purposes of agriculture within an agricultural unit”*

The definition of agriculture at sec.336 of the 1990 Act includes horticulture, fruit growing, seed growing, market gardens and nursery grounds. A polytunnel can therefore be seen as serving the purpose for an agricultural use and afforded permitted development rights under the GPDO. There are limitations however. These are examined further in Annex E of PPG7, *Permitted Development Rights for Agriculture and Forestry* which clarifies permitted development rights further (now carried over to PPS7 pending review). There are two classes defined:

**Class A** – for agricultural units of at least 5 hectares, rights are available for erecting, extending or altering a building, and for excavations and engineering operations.

**Class B** – for smaller units of at least 0.4 hectares, more limited rights exist for extensions and alterations of not more than 10% to the content of the original building.

Under both classes, development:

- *“must be on agricultural land, which means land in use for agriculture for the purposes of a trade or business, and excludes any dwelling house or garden;*
- *must be reasonably necessary for the purposes of agriculture within the unit. This condition does not require that a new building should necessarily accommodate an agricultural use already existing in the unit. Agricultural developments which are entirely self-contained and have no direct relationship with the rest of the unit may thus benefit from permitted development rights;*
- *must not give rise to, or alter or extend a dwelling;*
- *must not be within 25 metres of the metalled part of a trunk or classified road.”*

Under Class A, development giving rise to buildings, structures or works not designed for agricultural purposes is not permitted. The courts have held that this condition relates to the physical appearance and layout of a building and not its function.

Buildings, structures or works must not exceed 12 metres, or three metres when adjacent to an aerodrome. The ground area of any works or structure for accommodating livestock or any plant and machinery arising from engineering operations, or any building erected under this class must not exceed 465 square metres. In the application of these parameters to polytunnels they must be considered a ‘building’ in the first place in order for the 465 square metre limit to be relevant.



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# Appendix E

## Review of Appeal Decisions

2 Pages **Review of Appeal Decisions**

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A total of 18 appeal decisions were selected by inspection of the planning issues involved in their determination, and a brief review undertaken to determine the type and scale of development being proposed; the key planning issues considered and to understand why the inspectors came to their decision.

The development proposed did not normally apply solely to polytunnels, but often included other associated development such as storage buildings or temporary accommodation. The number of polytunnels proposed ranged from a single polytunnel to a maximum of four. These findings indicate polytunnels are often not considered on their own merits but are often considered as part of a 'wider' development. It is also clear the number of polytunnels being proposed is fairly limited (for the most part the polytunnels would be an element within a wider farming landscape). As such, large scale polytunnel development does not appear to be a particular threat. However the cumulative impacts of numerous small scale polytunnel developments may need to be considered.

Primary issues for consideration in polytunnel development relate to the justification for, and visibility of, the polytunnels. Justification issues cover the agricultural reasoning for polytunnels, their economic need and the economic viability of the enterprise to which they would contribute. For example robust business plans are often required to demonstrate need and viability.

The visibility of the polytunnels within the landscape is an important consideration. Associated issues include the potential of screening opportunities to reduce the visual impact and the degree to which the development respects the character and appearance of the area. In one appeal decision a polytunnel was refused planning permission as it would have been located in an elevated position from which it would be visually prominent. Furthermore the development could not effectively be screened to limit its impact. Where polytunnel development has been granted permission, conditions for the development are often applied to ensure the visual impact of the development is minimised for example, through the provision of tree cover screening.

Other common issues identified within polytunnel appeals include development associated with polytunnels for example barn for storage and temporary agricultural workers homes. Also 'transport' issues relating to increased traffic movements, traffic safety and site access are often a consideration.

Other issues that were considered when reviewing planning permissions for polytunnels include:

- Siting: whether the development adjoins existing agricultural buildings and is viewed as part of the farmstead or if it is an isolated development;
- Coalescence: whether the 'built' nature of polytunnels located in between distinct areas of settlement leads to the coalescence;
- Historic setting: if polytunnels detract from the historic setting of listed buildings;

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- Designated sites: how polytunnels affect the character and appearance of the designated landscapes (including AONBs and local landscape designations);
  - Permanence: whether the polytunnel is determined to be a permanent structure or temporary, considering size, permanence and physical attachment. Also consideration was given to the likelihood and ease of moving the structures.
  - Residents: the impact of polytunnels on local residents.

In reaching their decisions, inspectors assess the balance of these considerations on a case by case basis.

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# Appendix F

## Codes of Practice

4 Pages

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### **The Herefordshire Code of Practice for the Temporary Agricultural Use of Polytunnels**

#### **Background**

The Herefordshire Code of Practice was adopted in October 2004 following a review of the previous Code of Practice from 2003. A polytunnel review working group was established at the Council and a number of people were interviewed who both support and object to the code of practice in order to assess their views. A review of the legal implications, planning position and summary of the key issues relating to polytunnels in Herefordshire was also undertaken to inform the Code of Practice.

The aim of the Code of Practice is essentially to help provide some consistency in approach to dealing with polytunnels within the County and to assist the Council in determining which proposals require planning permission and which ones do not. The key features of the code need to be examined as well as any issues that are apparent in terms of interpretation, enforcement, support and opposition for the code.

#### **Key features:**

The Code of Practice applies to the use of temporary polytunnels consisting of metal frames covered with polythene and where crops are grown in the existing soil. The Code of Practice is not intended to have effect where Herefordshire Council as the local planning authority (LPA) decide that, on the facts available, planning permission is required.

The Code requires a grower to provide the LPA with information on a polytunnel checklist. The information on this checklist will be used by the Council to determine whether or not planning permission is required. It can therefore be seen as similar in principle to pre-application questionnaires for householders that are undertaken by many local planning authorities. Information on the checklist includes:

- Date of erection
- Overall size of farm
- Type of crop
- Method of growing (in ground, grow bag or off-ground)
- Area covered by polythene, height of polytunnel, method of irrigation and any other services connected (e.g. electricity)
- Expected period of time polytunnel to be in position
- Approximate date of removal of metal hoops, fixings and framings from land – there is a requirement for written confirmation that this has taken place within on month of this date.



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- Method of disposal of waste polythene
  - Location plan
  - Landscape impact assessment
  - Does the grower wish for the information provided to remain confidential
  - If planning permission is not required then the grower is required to inform the Council that notice has been given to the relevant Parish Council(s) and nearby neighbours of the intention to erect polytunnels.

The terms of the Code of Practice are as follows:

- Siting of polytunnels will be 50 metres from the nearest elevation of any dwelling subject to variation of that distance by agreement with that neighbour.
- The grower will submit a landscape impact assessment.
- The grower is encouraged to use less reflective coloured polythene.
- Siting of polytunnels should be restricted to two years (being a complete season) subject to the polythene covering removed for a period of six months in any calendar year. There shall be no return to the land which has been covered within two years.
- Polytunnel framework shall be removed from the land in accordance with the statement on the polytunnel checklist.
- Notice will be given by the grower to the Council confirming written or verbal notice has been given to the Parish Council(s) and nearby neighbours.
- Polytunnel users will use all reasonable endeavours to –
- Avoid disturbance to nearby residents at unsociable hours.
- Store unused polythene away from public view, waste polythene to be removed from the land and recycled.

The Code of Practice states that:

*“Compliance with the terms of this code will bring benefits to growers, residents who live near to polytunnel sites and Herefordshire Council, in terms of information and notice.*

*“Herefordshire Council as Local Planning Authority will regard compliance with terms of the Herefordshire Code of Practice as a material consideration when investigating any complaint or consideration as to the expediency of instigating enforcement action”.*

## Issues

It is clear that Herefordshire Council have taken a proactive approach to dealing with polytunnels development in the County, however it is not without its critics. As an important

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example of a Code of Practice it is therefore useful to look at both supporters and objectors to it and the weight and strength of their respective arguments.

### **The NFU/British Summer Fruits Association Code of Practice for the use of Polytunnels for the Production of Soft Fruit**

The introduction to the code states that,

*“The purpose of this code is to enable growers to demonstrate that they are responding to the concerns of members of the public by abiding by the requirements of the code. In drawing up this code experience has been drawn from the establishment of the Herefordshire Code of Practice and the Assured Produce generic crop protocol standards for 2004/05.”*

So it is based on the Herefordshire Code of Practice examined previously and, similar to this, sets out a number of conditions:

#### **Siting and Operation**

- Polytunnels must not be sited within 30 metres of the boundary of the nearest residential dwelling unless as a result of prior agreement with the neighbour concerned. Polytunnels may be located closer to residential dwellings if they do not obscure the views from the dwellings concerned after consultation with the residents.
- All reasonably practicable steps must be taken to minimise noise when working close to neighbouring houses either in the early morning (before 7 am) or in the late evening (after 8 pm).
- Steps should be taken to effectively manage run-off from polytunnels and where possible polytunnels should be sited to reduce the impact of run-off.
- All reasonably practicable steps must be taken, using tree or hedge planting to mitigate the visual impact of polytunnels, from the immediate view of neighbouring residential dwellings.
- Where possible, growers should consider using less luminant types of polythene to reduce reflective glare.
- Loose polythene should be secured to prevent noise nuisance, particularly when close to neighbouring dwellings.
- Polytunnels should be rotated around the farm to minimise the impact, with a maximum period of three years in one location. Under exceptional circumstances, the demands of a particular crop (e.g. raspberries may mean that polytunnels need to be isolated on the same site for longer than three years. In such situations care must be taken to minimise the impact by siting the polytunnels as far away from neighbouring dwellings as possible.
- The polythene covering over the frames must be removed for a minimum period of 6 months in any calendar year.
- Growers must store unused polythene away from public view.

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- Where polytunnels are to be removed from a site, the grower must remove the polythene from the hoops within one month of the completion of cropping unless to do so would cause damage to the soil because of poor weather conditions.
  - Disposing of waste plastic.
  - Waste polythene must be removed and be recycled in an approved manner.
  - Record Keeping

Records shall be kept of the following:

- The type of crop and whether grown in the ground, in bags or off the ground;
- The date when the framework and polythene cover are to be erected and the expected date of removal of the polythene cover (and frame if appropriate);
- The area and the percentage of the total area of the farm covered by polytunnels;
- Record of any notices given, including to any neighbouring residential dwellings, before work commences.

**Special Requirements for Polytunnels Erected in Areas of National Landscape Designation and other Statutory and Locally (Non-Statutory) Designated Areas**

In AONB and other designated areas, specific measures are necessary to ensure that the visual impact of polytunnels is minimised. To that end, the following measures must be taken:

The preparation of a landscape impact map showing the areas of intended polytunnel operations and indicating measures have been taken to mitigate the impact of polytunnels on the local landscape.

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# Appendix G

## Study consultees

1 Page

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### Local Planning Officers

David Wyborn	Exmoor National Park
Paul Whitham	South Norfolk District Council
Jonathon Barrett	Herefordshire District Council
Brian Titmuss	Waverley Borough Council

### AONB Officers

Philip Couchman	Chichester Harbour AONB
Andrew Blake	Wye Valley AONB
Andrew Shaw	High Weald AONB
Stephen Jack	Lincolnshire Wolds AONB

### Others

Paul Tame	East and West Midlands Officer, NFU
Phil Hudson	Chief Horticultural Advisor, NFU
Eric Drummond	Farmer, Herefordshire
Edward Kelly	Campaign for Polytunnel Control, Herefordshire



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# Appendix H

## Questions to AONB Officers, Local Planning Authority Officers and Others

2 Pages

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### **AONB Officers**

Scope: to identify from discussions with seven interviewees detail associated with the polytunnel issues as it affects AONBs, in terms of specific developments, planning issues and the prospects for the protection of the visual integrity of AONBs in the light of this particular development issue. Those AONBs where the issue is considered to be significant negative issue by the AONB officer will be targeted, complemented by contact with those where the pressures have apparently been diffused.

#### *Indicative Questions*

- What do you consider to be the significance of the polytunnel issue, both inside and adjacent to the AONB in your charge?
- What are the key planning issues in respect of the impact on AONBs?
- Do you consider that polytunnels should be subject to closer attention by the planning system?
- Are there specific examples (either applications granted or those which have gone to appeal) worthy of further analysis?
- Are there any further points that you wish to make?

### **Local Planning Authorities (within/adjacent to AONBs)**

Scope: to explore some of the detailed issues associated with specific developments and/or planning issues highlighted either through the postal survey or through other means (appeal cases, issues raised by AONB officers etc). Total number of interviews will be around 5.

#### *Indicative Questions*

- What is your impression of the pressures for development of polytunnels?
- What is the broad balance between agricultural and non-agricultural operations in these kinds of developments?
- What are the key decision issues surrounding the determination of polytunnel applications?
- What proportion of applications are taken to appeal?
- Are there any further points that you wish to raise?

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### **Representative Groups (NFU, CLA, CPRE, farmers)**

Scope: to discuss the private perspective on the polytunnels issue, particularly the emergence of the issue and the business case for using polytunnels. Total number of interviews will be around 4.

#### *Indicative Questions*

- What has been your involvement with the polytunnel issue?
- What are the main pressures for polytunnel development?
- What is your opinion of the visual impact of polytunnels, particularly in protected landscapes?
- Do you perceive there to be other significant issues associated with polytunnel development e.g. living accommodation for farm workers?
- What contact have you had with the planning system (as an applicant/advocate/other)?
- Are there any further points that you wish to raise?

# Appendix I

## Appeals Relating to Polytunnels Since 1990

3 Pages

Ref. (relates to no. in compass search)	Authority	AONB/NP	Brief Description	Decision	Main reason
1	Chiltern DC	AONB	Livestock polytunnel for ostrich rejected	Dismissed	Not reasonably required for purposes of agriculture
2	North Dorset		3 Hort polytunnels etc	Dismissed	?
3	Forest of Dean		Polytunnel as part of wider development	Dismissed	No agricultural need, harm character, unsustainable location poor access
4	North Norfolk	AONB	Polytunnels in garden centre	Dismissed	Method of fixing - concrete foundations - building operation - no PD rights
5	North East Lincs		Polytunnel as part of wider development	Allowed	No harm to character, no loss of resi amenity
6	Hinckley and Bosworth		Polytunnel as part of wider development	Dismissed	?
7	Erewash		Polytunnel/marquee frame	Dismissed	Operational development Harm to character and openness of strategic gap
8	Adur		4 polytunnels at hort. site, part of wider development	Dismissed	
9	?			Allowed/dismissed	
10	Kennet		Polytunnels part of wider development	Allowed/dismissed	Polytunnels allowed - no harm to landscape
11	Windsor and Maidenhead		Polytunnels a minor aspect of major development	Allowed	But polytunnels not the major issue
12	Chorley		Polytunnels part of wider development	Dismissed	But polytunnels not the major issue
13	Boston		Polytunnels part of wider development	Allowed/dismissed	But polytunnels not the major issue
14	Lichfield		Polytunnels part of wider development	Dismissed	But polytunnels not the major issue
15	Herefordshire		Polytunnels part of wider development	Dismissed	?
16	Ashford	AONB	2 polytunnels for horticulture nursery	Dismissed	Harmful to character, appearance of AONB
17	Maidstone		Polytunnels and unauthorised extension to agric. buildings	Allowed/dismissed	?
18	Bath and North East Somerset	AONB	4 polytunnels	Dismissed	?
19	Rother	AONB	2 polytunnels	Allowed/dismissed	?
20	Allerdale		Polytunnels part of wider development	Allowed/dismissed	?
21	Winchester		Polytunnels part of wider development	Dismissed	Limited period for polytunnels outweighs harm
22	Bridgnorth		Aircraft hangar polytunnels	Allowed	No harm to resi amenity
23	Ashford		18 polytunnels	Dismissed	harm to character and openness of countryside
24	Teignbridge		3 Hort polytunnels with agricultural workers dwelling	Dismissed	Economic need dismissed



Ref. (relates to no. in compass search)	Authority	AONB/NP	Brief Description	Decision	Main reason
25	Wokingham South		10 polytunnels	Dismissed	?
26	Oxfordshire		2 hort. polytunnels 3 polytunnels - breach of temporary period condition	Allowed	No harm to resi amenity
27	North Shropshire			dismissed	
28	South Somerset		Polytunnels and associated permaculture operation	dismissed	Harm to character/appearance of SLA.
29	Three Rivers		Polytunnels part of wider development	dismissed	Polytunnels not the major issue
30	North East Derbyshire		Polytunnel affecting setting of conservation area, setting of listed building	allowed	?
31	Mid Sussex	AONB	Agric storage barn and polytunnel	dismissed	Harmful to appearance of countryside AONB
32	North Norfolk South		Polytunnel and greenhouses	dismissed	Impact on character/appearance of area
33	Oxfordshire		2 polytunnels and poultry rearing building	allowed	No harm to AGLV
34	Isle of Wight		2 polytunnels and mobile home	dismissed	Effect on landscape and appearance of area harm to character
35	South Shropshire		Car repairs/storage at polytunnels	dismissed	/appearance of open countryside harmful to
36	Wealdon		polytunnel for plant protection	dismissed	character/appearance of surrounding landscape
37	North Tyneside		polytunnel part of wider development	allowed	?
38	Babergh		3 polytunnels, shed, surfacing and driveway	dismissed	Impact on conservation area and highway safety.
39	Aylesbury Vale		polytunnel part of wider development	dismissed	But polytunnels not the major issue
40	Wyre		4 unauthorised polytunnels	dismissed	loss of amenity to outlook
41	Chester		4 polytunnels in association with horticulture	allowed	?
42	Darlington		Polytunnel used for lambing shelter	dismissed	?
43	Durham		Polytunnels and glasshouses	dismissed	Effect of proposal on landscape
44	Waverley	AONB	28 dwellings to replace hort site with derelict polytunnels/glasshouses	dismissed	not relating to polytunnel development
45	Epping Forest		4 polytunnels - mushroom farm	dismissed	?
46	Caradon	AONB	Polytunnel at permaculture hort. enterprise	allowed	Little harm to character/appearance of AONB.
47	Arun		Retention cladding to polytunnels	dismissed	?
48	Rutland		storage shed + polytunnels at horticulture nursery	allowed/dismissed	?
49	West Dorset		Unauthorised polytunnels part of wider development	Dismissed	Insufficient agric. need, intrusion into countryside
50	Not relevant.				
51	Daventry		Breach of limited period condition on polytunnels/lambing shelter	dismissed	harmful to setting of conservation area
52	Crewe and Nantwich		3 polytunnels for nursery	allowed	?
53	Tendring		Polytunnels part of wider development	allowed/dismissed	?
54	Wokingham		10 polytunnels part of wider	dismissed	?

Ref. (relates to no. in compass search)	Authority	AONB/NP	Brief Description development	Decision	Main reason
55	Not relevant.				
56	Wigan		Extend polytunnel as part of wider development Condition in dispute - retention of glasshouse and polytunnel	allowed	?
57	South Cambs		2 polytunnels + mobile home etc.	Dismissed	?
58	Aylesbury Vale		Polytunnel part of wider development	Dismissed	?
59	Wealdon			Dismissed	?
60	West berks	AONB	4 polytunnels and shed at hort. nursery	Allowed	?
61	Solihull		Not really relevant		
62	South Oxfordshire	AONB	2 agric. buildings + 1 polytunnel	Dismissed	?
63	Wirral		Polytunnels part of wider development	Dismissed	?
64	Waverley		Polytunnels	Dismissed	Effect of proposal on landscape

Appeal decision letter obtained and analysed

Appeal decision letter obtained



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# Appendix J

## Analysis of Selected Appeals Decision Letters

21 Pages

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**Ref APP/F0114/C/02/1099568 and 1099569**

Site: Floyd Farm, Bath Road, Northstoke Bath

Location: Bath and North East Somerset Council

Development proposed:

- Erection of 4 poly tunnels
- Formation of a track
- Widening of access from the land onto a road

Key planning issues:

- Council take no issue with the matter of protecting openness, rural character and scenic beauty of the Open Countryside, AONB and Green Belt in which the development falls.(AT least in the short term whilst the business is being established)
- Contention is in regard to the safety of the access arrangements. Namely:
- Visibility available to drivers leaving the site of oncoming traffic (hedge of adjoining landowner severely restrict sightlines.
- Stopping Sight Distance is not complied with – there might not be enough warning to following vehicles that a vehicles is waiting to turn into the site. (This is not critical but adds to the unsuitability of the site).
- Access track is not wide enough to allow vehicles to pass resulting in incoming vehicles waiting on the road for longer. (This could be overcome by widening the track)

Why Inspector came to their decision - DISMISSED

Enforcement notices upheld due to the fact poor sightlines could not be easily overcome. Access creates a serious hazard to main road traffic.

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**Ref - APP/P1615/A/04/1151278**

Site: East wood Lodge Farm Park Hill Woolaston Gloucestershire, GL15 6PU

Location: Forest of Dean District

Development proposed:

- Temporary dwelling to service sustainable lifestyle holding
- Compost toilet
- Small wind turbine
- Solar panels

Revised business plan submitted with the hearing statement setting the use of the business for the breeding sheep and pigs, flock of laying chickens and two polytunnels for salad crops, vegetables and fruit

Key planning issues:

- Whether the proposal is essential to the efficient operation of agriculture
- The effect on the character and appearance of the area
- Whether it accords with the principal of sustainable development
- The adequacy of the approach roads leading to the site.

Why Inspector came to their decision - DISMISSED

- Mobile home is not essential to the efficient operation of agriculture as there is a lack of agricultural need:
- Supervision of lambing and farrowing does not justify the development nor does security concerns.
- There is no clearly established functional need for development.
- Enterprise is unlikely to be economically viable. It is not planned on a sound financial basis.
- In the absence of a substantiated agricultural need the following reinforces the belief the proposal is unacceptable
- Mobile home would have harmful impact on the character and appearance of the area. The site is within a locally designated Special Landscape Area.
- As development lacks agricultural justification the proposal breaches sustainable development principals (most journeys would have to be made by car.)
- Although agricultural operations require traffic movements, allowing development would result in additional journeys. Approach road is inadequate to serve the development.

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**REF APP/E2205EAE02E1098296**

Site: The Willows Faversham Road Challock

Location: Ashford Borough Council

Development proposed:

- Erection of two polytunnels and a store building in connection with a horticultural nursery.

Key planning issues:

- Main issue is the effect on the landscape of the area (the site is located within the Kent Downs and High Weald AONB and within a Special Landscape Areas) and consequence for the safety and convenience of highway users.
- Proposal for development inconsistent with the conservation of natural beauty will be weighed in their importance in securing economic and social well being of the area..
- Development may be permitted where it is demonstrated to be necessary for agriculture or other land uses demanding a rural location.
- Development must be designed to respect local character
- Transport system must be capable of serving the development

Why Inspector came to their decision - DISMISSED

- Development would not conserve or enhance the natural beauty of the landscape. Building would not respect the special character of the area.
- Proposed buildings would be noticeable from the main road.
- Although contributes in some small measure to the economic and social well being of the area, there is no essential need for the development in this location.
- No agricultural need has been demonstrated that would outweigh the landscape objections. The development conflicts with policies relating to the AONB and SLA.
- Satisfied that traffic movements would be limited.

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**Ref app/f1230/c/00/1043579**

Site: 10 Talbolthayes, West Stafford Dorchester

Location: West Dorset District Council

Development proposed:

- Erection of polytunnels (3-4) and associated barn. Separate application for mobile home.

Key planning issues:

- Whether the structures are necessary for the purposes of agriculture and if so
- Whether they adversely effect the visual amenity of the area
- Whether they would detract from the setting of he listed building.

Other considerations:

- No permitted development rights for agricultural buildings on the site.
- Enterprise does not qualify as farm diversification but is a new enterprise.

Why Inspector came to their decision - DISMISSED

- Polytunnels are less prominent than the mobile home, two are screened by hedging and new tree planting will provide additional screening in time. Polytunnels are the type of agricultural structure often seen in the countryside associated with horticultural crops. Therefore the polytunnels have limited impact on the rural character of the countryside
- Polytunnels can be seen when viewing the listed building. Although having an agricultural purpose the polytunnels are utilitarian, contemporary structures that are insensitively sited in relation to this listed building. (polytunnels should be moved to a different location)
- Additional polytunnels are not considered reasonable necessary as there is considerable uncertainty the crops to be grown (ginger) would actually be successful. There is insufficient justification for the additional polytunnels. Existing tunnels given extension to so as to test whether or not ginger can be grown.
- The barn is not necessary for the agriculture use at this initial stage.
- Mobile home falls to preserve the setting of the listed building and reduces the openness of the countryside. Additional planting or subdued painting would not overcome the identified harm to public amenity. Permission refused.

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**Ref APP/e2205/a/02/1088206**

Site: Hamilton Farm Stone Cross Bilsington

Location: Ashford Borough Council

Development proposed:

- 18 polytunnels and service building

Key planning issues:

Whether the appearance and character of the locality would be seriously harmed

- Whether any such harm would be off set by the need for this development here and prospects for its viability.

Policies set out

- Development associated with agriculture and horticulture will normally be permitted serving a viable farm/horticultural unit and normally being in or adjoining a settlement or located on land identified for employment uses. Development will need to demonstrate it demands a rural location.
- Development in countryside should be well designed and preserve and as far as possible enhance the character of the countryside.
- Development proposals should not be poorly designed in terms of scale, density, height, layout, massing, landscape, access or detailing.
- New development must be designed to respect the character and appearance of the area around it.

Why Inspector came to their decision - DISMISSED

- The site is not in/nor adjoins a settlement or is located on identified employment land.
- Polytunnels are not attractive structures and it would be seen from areas near by at times of the year when existing deciduous tree screening would be least effective. There would be considerable harm to the appearance of the countryside conflict with policies above:
- Development in countryside should be well designed and preserve and as far as possible enhance the character of the countryside.
- New development must be designed to respect the character and appearance of the area around it.
- Traffic movements from the site will not disrupt the countryside.
- The need and viability of the development do not over come concern regarding the appearance and character of the locality being seriously harmed. The polytunnels will be used to house hanging baskets. A rural location is not needed. Business plan demonstrates only a quarter of sales would be from the hanging baskets.



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**Ref APP/Y2620/C/04/1150479**

Site: Emcy Garden and Leisure Centre, Weybourne Road, Kelling Norfolk NR25 7ER

Location: North Norfolk District Council

Development proposed:

- 2 large growing tunnels

Key planning issues

- Site lies in open countryside of the Norfolk Coast AONB.
- Temporary nature, or operational development
- Business need
- Employment associated with the business

Why Inspector came to their decision – dismissed

- Tunnels are permanent as they are
- Size - substantial structures
- Permanence
- permanent as concerted into the ground and practically will not be moved
- tunnels appear to be too substantial and costly to simply protect the stock but serves to meet long terms needs of the business (applicant has tried for planning permission for a permanent growing house)
- physical attachment – attachment to the ground via concrete adds weight to the other two factors
- Growing tunnels represent building operations on the land for which there are no permitted development rights.
- Removal of polytunnels is to be undertaken ASAP as the tunnels have an adverse effect in the AONB.
- Any future development associated with the garden centre will need to endure visual impacts are kept to a minimum due to the AONB designation.

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**Ref app/k3225/a/01/1065279**

Site: Hammer Mill Farm

Location: South Shropshire District Council

Development proposed:

- Temporary use if polytunnel for car repairs

Key planning issues:

- The effect the use has on the character and appearance of the surrounding area.

Why Inspector came to their decision – dismissed

- Site is some distance from the house. Views are obtained of the site from a neighbouring bungalow.
- Car repairs would not normally be undertaken in a polytunnel.
- Associated parking and floodlighting pole give the site a commercial appearance.
- Car repair activities in a countryside location appear unattractive and incongruous and do not protect the natural landscape of the area.
- Poly tunnels are not of a permanent nature or substantial construction to be reused.
- Intensification of the site would exacerbate the extensive harm to the character and appearance of the landscape.
- The tunnels would be incapable of providing meaningful noise insulation.
- Due to the presence of flammable materials polytunnels could pose a safety risk.

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**Ref app/r3325/c/00/1051594**

Site: Turners Field, Compton Dundon, Somerset

Location: South Somerset

Development proposed:

- Various include polytunnel.

Key planning issues:

- The effects of the development on the character and appearance of the site as countryside, having regard to the terms and objectives of policies controlling housing development in such locations
- The degree of need for continuing residential occupation of the site in associated with a use for permaculture
- The personal circumstance of the Appellant and the implications of the notice in relation to the Human Rights Act.
- The site falls within open countryside and in a Special Landscape Area.

Why Inspector came to their decision – Dismissed

- Public views of the appeal site are available from rather short distances from higher ground.
- Polytunnel is a sizable feature. Its non agricultural use for storage/garaging is drawn attention to by the tarpaulin covers.
- Residential use of the site has caused harm to the landscape around the village.
- It is a permaculture garden rather than land used to cultivate food. No demonstration functional need for accommodation on site.

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**Ref app/d3830/a/01/1077679**

Site: Four Acres Poultry Farm London Road, Balcombe, Haywards Heath

Location: Mid Sussex District council

Development proposed:

- Barn and polytunnel

Key planning issues:

- Whether is would be harmful to the appearance of the countryside and the High Weald AONB.
- Whether is would lead to an unacceptable increase in the use of an unsatisfactory access

Why Inspector came to their decision – Dismissed

- Land on which polytunnels would be built has been substantially raised above road level and as such would be prominently viable form a wide are of the AONB and a local footpath.
- They would not be effectively screened.
- Modern commercial appearance would be out of keeping with the high quality landscape here and would be damaging to the AONB.
- As a visually important site the need to protect the landscape of the AONB outweighs the agricultural need as an extension to his small poultry enterprise.
- They (barn and polytunnel) can not be acceptably landscapes as additional plating would itself appear as an intrusive and unnatural feature in the AONB.
- Increased levels of activity in the site would generate additional traffic through an existing substandard access.

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**Ref app/k0805/a/00/1049792**

Site: The Field Penpal Lostwithiel

Location: Caradon District

Development proposed:

- Polytunnel

Key planning issues:

- Visual effect of the polytunnel on the character and appearance of the locality which is included in the Cornwall AONB

Why Inspector came to their decision – Approved

- Polytunnel will be situated behind a 4-5m high beech hedge so would be screened even in winter.
- It would not change the landscape character of this part of the AONB. It would be barely visible, if at all from only distance viewpoints. It would be used for horticultural purposes.
- Condition were made relating to
  - standard time conditions;
  - retention of the adjoining hedge; and
  - polytunnel would be green in colour and this colour will not be changed

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**Ref APP/P2114/A/01/1074039**

Site: Plot 1 Porchfield Road, Shalfleet, Newport

Location: Isle of Wight

Development proposed:

- Erection of two polytunnels for agriculture
- Mobile home for stage of tools

Key planning issues:

- Effect of the development on the landscape and appearance of the area. Site is with an AONB and a Heritage Coast area.
- Why Inspector came to their decision – dismissed
- The polytunnels would be inappropriately utilitarian and out of place in this very rural traditional landscape.
- Their light colour would contrast markedly with the general dark tones of the landscape and traditional rural buildings
- Although only a limited impact on public views the integrity of the landscape should be protected within an AONB irrespective of the degree of public visibility.
- Planting would take time to screen the tunnels and this hedgerow will not reflect the existing pattern of field boundaries but will highlight the rectangular boundary.
- The development would detract from the appearance of the area and erode the distinctive landscape of the AONB.
- There would be harm to the rural landscape which forms the setting for the nearby coastline (Heritage Coast)

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**Ref APP/B2002/a/04/1141685**

Site: Five Acres, Stallingborough Road, Little London, Immingham

Location: North East Lincolnshire

Development proposed:

- Erection of an agricultural building, polytunnel and site of a temporary agricultural dwelling.

Key planning issues:

- Whether the proposal would materially harm the character and appearance of the surrounding area.
- The effect of the proposal on the living conditions of nearby residents (noise and odours).
- Site is within an Area of Archaeological Importance.

Why Inspector came to their decision – granted

- The polytunnels form part of the agricultural development. It would be used to supplement income from the piggery by the growing of vegetables salads and flowers for farm gate sales. It meets the policy which sets out the types of development permissible in the countryside
- The structure would be hidden from view by the livestock building and hedges. Therefore there is no unacceptable visual impact on the character and appearance of the area. It is a rural area without special character.
- Proposal will not harm the living conditions of nearby residents:
- Odour nuisance for local residents will be minimal as the enterprise is relatively small scale, straw manure will be produced (which is less odorous than slurry) and it will be stored off site.
- Noise will be minimal.
- Conditions will be imposed on materials used and landscaping so as to protect visual amenity.

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**Ref app/y3805/a/03/1119814**

Site: Old Salts Farm Nursery, Old Salts Farm Road, Lancing, Sussex BN15 8JQ

Location: Adur District.

Development proposed:

- Erection of 3 buildings and 4 polytunnels.

Key planning issues:

- Effect on the character and appearance of the surrounding area
- Preventing the coalescence of settlements
- If harm arises whether this is outweighed by other considerations
- Site is within the Lancing and Shoreham Strategic Gap.

Why Inspector came to their decision – dismissed

- Polytunnels would be clearly seen in close up views and long distance views.
- Proposal would add to the existing development in the area making it appear significantly more built up. This would detract from the rural character and appearance of the area and openness of the strategic gap.
- There is no business plan demonstrating an essential need for the development. There is not a demonstrated agricultural need for the proposed development that would outweigh the harm identified above in relation to the character and appearance of the area and coalescence of settlements.
- The scale of the polytunnels alone would make them harmful to the character and appearance of the area and harmful to the council's objectives of preventing coalescence of settlements.



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**Ref – T/App/q3115/a/99/1029824/p4**

Site: Wyfold Lane Rotherford Peppard

Location: South Oxfordshire District Council

Development proposed:

- Two agricultural buildings and one polytunnel

Key planning issues:

- Located in the Chilterns AONB
- The effect of the proposals on the character and appearance of the area.

Why Inspector came to their decision – dismissed

- Siting of the buildings would be unduly prominent.
- They would appear disparate and unrelated elements.
- Relative isolated position would emphasis their presence in this attractive landscape.
- The barns could through careful siting and appropriate mitigation pass largely unnoticed by the public.
- The polytunnels through their materials and location well into the site would look particularly alien in this attractive landscape. It would not be satisfactorily assimilated into the landscape.
- Development would be significantly harmful to the character and appearance of the area. It should be possible to reconcile proposals for development with the need to conserve and wherever possible enhance the landscape. However this is not achieved under the current proposals.

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**Ref app/c1435/a/01/1070646**

Site: Five Oaks nursery, Ersham Road, Hailsham, East Sussex

Location: Wealdon District Council

Development proposed:

- polytunnel

Key planning issues:

- Impact of the polytunnel on the open appearance of the surrounding landscape.

Why Inspector came to their decision

- Site is apparent to passing motorists. In a flat and open landscape with views across the marshes this large white-ish structure would be eye-catching and unattractive.
- Although an agricultural building the associated car park and plant sales would mean the site would take on an urban/suburban character. The site would add to the intrusive elements already there.
- Although there is a need to have such a facility on site , the tunnel would help the business become more stable and the business would offer opportunities to expand the rural economy these factors do not override the fact the schemes is contrary to council policies in particular those aimed at protecting the appearance of the countryside.
- Not convinced the landscaping proposed would overcome the objections to the scheme as it may draw attention to the building and appear out of place.

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**Ref app/u1430/a/02/1096825**

Site: Hawkhurst Road, Flimwell, East Sussex

Location: Rother District Council

Development proposed:

- Retrospective application for modifications to an existing access, two polytunnels and a storage building.

Key planning issues:

- Whether there is a justified need for the proposed polytunnels and storage building for agricultural activity.
- The effect of the retention of the access and the erection of the polytunnels and storage building on the character and appearance of the area, having regard to its location within the High Weald AONB.

Why Inspector came to their decision

- Agricultural justification – the proposed polytunnels and storage building would be reasonably necessary for horticultural purposes within the unit to increase the range of crops produced.
- Character and appearance – the access including hard surfaces, fences and gated entrances is excessive for the scale of the enterprise. It opens up the site and proposed structure to view and they harmfully change the rural character of the areas as well as reducing areas for landscaping. These elements have a very urbanising effect on the appeal site and fails to conserve or enhance the AONB.
- Existing mobile homes and containers on site detract from and harm the visual amenity of the site. The erection of the polytunnels and storage building would allow the enterprise to expand the horticultural crop range and rationalise storage. The proposal would provide the opportunity for an enhancement to the site by the removal of existing structures, provision of adequate landscaping and rationalisation of hard standings. The polytunnels and storage would serve to enhance the character and appearance of the area. However the access remains a concern.
- Conditions were applied regarding the landscaping of the site and they structures should be removed when they cease to be used for agriculture in connection with the holding.

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**Ref t/app/w0340/a/99/1030938/p9**

Site: Ufton Lane, Padworth, Berkshire

Location: West Berkshire District Council

Development proposed:

- Erection of a building and four polytunnels

Key planning issues

- Impact of the proposal on the character and appearance of the areas in regard to the visual impact.
- The effect of the proposal on highway safety with regard to traffic generation and the junction.

Why Inspector came to their decision – granted

- Character and appearance: the site itself is not within the AONB or special landscape area. It is located in an area of open countryside that forms an important transitional landscape in the foreground of the AONB and is visible from the AONB and ASLI. The site would be screened by the adjacent stables and boundary hedges. Screening from other directions would also be possible if the field boundaries were landscaped. These factors would combine to reduce significantly the visual impact of the proposal.
- With the stables the development would form a fairly compact building group.
- It would be assimilated into the landscape without disturbing the visual balance between the open countryside and the buildings within.
- The realigned hedge on the entrance would not materially affect the rural character of the lane.
- It complies with advice on design, AONB and agricultural development in PPG7.
- Highway safety – the increased incidence of turning movements at the junction is a concern. However it does not impose an unacceptable risk to highway safety.
- Conditions apply including a landscaping condition to ensure the site is properly screened.
- Concerns expressed that the development would disturb the recreational opportunities of the canal. However, the canal is of a sufficient distance so as to have minimal impact also the proposal is of an agricultural enterprise that would normally be found in a rural area.

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**Ref app/x0415/a/04/11500174**

Site: Ostrich Farm, Ramscote Lane, The Vale, Chesham, Bucks, HP5 2XP

Location: Chiltern District Council

Development proposed:

- Livestock polytunnel

Key planning issues:

- Whether the proposal would constitute inappropriate development harmful to the green belt.
- Effect on the openness, character and appearance of the surrounding countryside with regard to its siting in a Green Belt and the Chilterns AONB.
- Whether there are very special circumstance sufficient to clearly outweigh any harm resulting from inappropriateness and any other harm.

Why Inspector came to their decision – dismissed

- Appropriateness: polytunnel is not reasonably required for agricultural purposes as existing buildings are not fully utilised. There is not clear evidence that polytunnels would be required for the enterprise. As they tunnels are not reasonably required for agricultural purposes it would be inappropriate development in the Green Belt and therefore harmful.
- Openness, character and appearance: polytunnel would not be prominent in any long range views. Although the scope for screening by landscaping is limited, polytunnels are not uncommon features in the countryside. AS such it would have little impact on the greenbelts openness.
- The size, siting and appearance of the tunnel close to another agricultural building would not appear incongruous or out of character in its landscape setting. It would not have an unduly harmful effect on the openness of the green belt or the character and appearance of its surroundings.
- The proposal would be inappropriate development harmful to the function of the Green Belt .

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**Ref: APP/R3650/C/04/1160263**

Site: Tuesley Farm, Tuesley Lane, Godalming GU7 1UG

Location: Waverley Borough Council

Development proposed:

- erection of polytunnels, windbreaks, an earth bund and other works

### ***Background***

This long-awaited appeal decision has drawn together a number of issues of specific relevance to this study. These are set out below and as such stand as an update to the main report, as opposed to incorporating the issues within the analysis. Indeed the issues raised in the appeal serve to highlight and reinforce issues set out in the report.

The case involved two appeals: Appeal A (APP/R3650/C/04/1160262) relating to the stationing of caravans and other works and Appeal B (APP/R3650/C/04/1160263) relating to the erection of polytunnels, windbreaks, an earth bund and other works. This review concentrates on issues pertinent to Appeal B given its concentration on the polytunnel issue proper, with ancillary development (principally caravans and attendant servicing) being dealt with by Appeal A.

The appeal site at Tuesley Farm, Godalming covers about 190ha. During 1995 cumulative polytunnel coverage was 60.8ha with maximum coverage at any one time of 39ha. The Inspector spent some time reviewing the facts surrounding the use of polytunnels at Tuesley Farm. The prime facts, established in this case, are:

- Machinery is used to screw the metal legs into the ground (para 24).
- It takes 45 man-hours to fully-erect one acre and 32 man-hours to dismantle the same. Teams of ten are engaged in the erection and dismantling processes (para 25).
- In essence, polytunnels are erected on a greater or lesser number of blocks around the farm for nine months of the year (para 29).
- To determine whether *building operations*, and hence *development*, have occurred involves the application of a legal test (para 38).
- The legal test involves consideration of three factors - size, permanence and degree of physical attachment - in deciding what is a building or structure (para 39). The approach to the question of whether there [has] been a building operation [is] to consider, first, whether there [is] a building. If there [is] a building, applying the [legal test] (para 40).

### ***What are the principle elements of the Inspector's decision?***

The key components of the Inspector's decision are detailed below. Particularly salient parts of the argument are underlined>.

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- The fact that the component parts of one polytunnel are designed such that they can be linked to one another, side-by-side, emphasises the solidity of appearance of the network thus formed (para 49).
  - Applying the appellant's evidence of the number of man-hours per acre needed to erect the polytunnels the task would be neither quick nor simple, serving to illustrate the scale of the work needed to provide the polytunnels (para 51).
  - Together, these factors indicate that, at Tuesley Farm, the polytunnels to which the notice is directed are, as a matter of fact and degree, of substantial size and proportion (para 52).
  - As a matter of fact and degree, the polytunnels have a substantial degree of physical attachment to the ground (para 53).
  - The polytunnels can be moved only by being taken-to-pieces, rather than being moved bodily. Once they are dismantled in this way, then bearing in mind the length of time, expressed by the appellant in man-hours per acres, taken to do so, that would be of sufficient scale, in itself, to amount to demolition and, by definition, a building operation (para 55).
  - Nor would the polytunnels in this case be transient, ephemeral or fleeting. Having regard to all of the circumstances of the present case and as a matter of fact and degree, the provision of polytunnels on land at Tuesley Farm, by reason of their size, permanence and degree of attachment to the land, is not a use of land, but comprises a building operation and hence 'development' within the meaning of the 1990 Act (as amended) (para 58).
  - By Class A of Part 4 of Schedule 2 to the GPDO, 'permitted development' extends to "the provision on land of buildings, moveable structures, works, plant or machinery required temporarily in connection with and for the duration of operations being or to be carried out on, in, under or over that land or on land adjoining that land" (para 59).
  - As a matter of fact and degree, the existence of such polytunnel blocks within the single planning unit for up to nine months of the year could not reasonably be regarded as being 'required temporarily'. But even if I am wrong and were to accept the appellant's contention that the polytunnels are in place 'temporarily', within the ordinary meaning of that expression, they are not 'required for operations' and so the entitlement given by Part 4 would not apply (para 73).
  - From this background, land used for the purposes of agriculture would be a use of land rather than an operation. Class A of Part 4 of Schedule 2 would not enable buildings to be erected to facilitate the use of the land for agriculture. The polytunnels would amount to 'development' (Para 74).
  - The polytunnels would embrace varying proportions of the appeals site for parts of the year. But for the times they would be present, their impact arising from the sheer scale of the development, especially in circumstances in which blocks of polytunnels are erected on adjoining parcels of land, would dominate and overwhelm the appearance of the existing largely open rural landscape (para 133).

- 
- The extensive blocks of polytunnels would not meet the high standards of design and appearance that development plan policies seek of buildings in the countryside. The proposed development, together with the landscaping masterplan, would be out of place in terms of their scale, height, form, and appearance, failing to protect the openness and intrinsic qualities of the countryside and failing to respect its character (para 142).
  - In the balance that has to be drawn between the needs of this agricultural enterprise and environmental impact arising from the presence of the polytunnels, I am firmly of the view that those agricultural needs would be far outweighed by the harm to the countryside arising out of the scale and appearance of the polytunnels (para 162).

***Why is this decision relevant and what are its implications?***

This appeal, notwithstanding the specific circumstances surrounding the scale of the operation and its siting, demonstrates the testing of the principle of development in respect of the erection of blocks of polytunnels as they are now commonly used on a commercial scale (that is, poles mechanically screwed into the ground and requiring teams of men and a considerable amount of time to do so). As such the decision is important in reaching the firm conclusion that this type of polytunnel, on this scale, clearly constitutes development by virtue of the three tests of size, permanence and degree of physical attachment, as well as falling outside the provision for permitted development under the GPDO. As a development, this case also demonstrates that the scale of the development compromises the intrinsic qualities of the countryside and as such fails to respect its character. In addition, proposed landscaping of the development would serve to damage landscape character. These factors, in total were judged to far outweigh any agricultural need offered as mitigation.

A statement by the Director of Planning and Development at Waverley is apposite: “The acceptability of the developments has been determined largely on specific local circumstances in this case; therefore, this outcome should not be interpreted as setting a precedent for the whole of the country. However, it will be a useful case for planners elsewhere because it established that polytunnels of the type involved in this decision do require planning permission; and it also sets out a range of tests to establish whether this may be acceptable in defined circumstances” (emphasis added).

In conclusion, the Tuesley Farm appeal decision confirms the analysis of this report, that polytunnels do constitute development (by virtue of the legal test), therefore require planning permission, and in the case of AONBs and other areas of high landscape quality would be hard to justify given their damaging effects on the intrinsic qualities of the countryside and its character. As stated in the report, it is the duty of local planning authorities to apply this logic accordingly. The Tuesley Farm appeal decision should give them more substantive grounds for doing so.

The full appeal decision letter can be found at:

<http://waverweb.waverley.gov.uk:8080/live/wbc/pressrel.nsf/86ab9805fc3ebfa90025667c005cef03/617813782c690351802570dc0056275c?OpenDocument>





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# Appendix K

## Questionnaire to Local Authorities, AONBs an National Parks

4 Pages

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Polytunnel Questionnaire to Local Planning Authorities

**Name of Local Authority:** .....

**Contact name:** ..... **Contact tel. no.:** .....

**Contact e-mail address:** .....

- 1. Have you dealt with the issue of polytunnels, either via advice, applications or through enforcement action?**

- ☐ No
- ☐ Yes, have provided advice
- ☐ Yes, via applications
- ☐ Yes, through enforcement action

- 2. Has your authority developed a policy relating to polytunnels or produced guidance on them?**

- ☐ No
- ☐ Yes, have developed policy
- ☐ Yes, have produced guidance

- 3. Is your understanding that polytunnels can be erected under Permitted Development Rights (PDR) as agricultural operations or require planning permission?**

- ☐ Polytunnels can be erected under PDR as agricultural operations
- ☐ Polytunnels require planning permission.

- 4. What are the key development control issues which surround this kind of development?** e.g. visual impact, development in the open countryside, local economic viability/diversification? (Please list the top three issues)

1. ....
2. ....
3. ....

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**5. Do you have examples of polytunnel development which illustrate any of the issues above?**

☐ No

☐ Yes (please state location and issue below)

1. .... issue.....
2. .... issue.....
3. .... issue.....

**Thank you for taking the time to complete this questionnaire.**

**Please return to Robert Deanwood, Entec UK Ltd, Gables House, Kenilworth Road,  
Leamington Spa, Warwickshire, CV32 6JX in the prepaid envelope provided by  
5th August 2005**

Polytunnel Questionnaire to AONBs

**Name of your AONB .....**

**Please tick (✓) the answer boxes below:**

**1. Are you aware of polytunnels as an issue affecting AONBs?**

☐ Yes, is an issue affecting AONBs

☐ No, is not an issue affecting AONBs

**2. Have they affected your AONB, either directly or on the margins?**

☐ No

☐ Yes, directly

☐ Yes, on the margins

☐ Yes, both directly and on the margins.

**3. Have you been involved with polytunnels through the planning process either as an objector, or consultee?**

☐ No

☐ Yes, as an objector

☐ Yes, as a consultee

☐ Yes, other (please state below)

.....

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**4. Please suggest a contact for a more detailed discussion regarding the issue of polytunnels in your AONB (this may be yourself or one of your colleagues):**

Name : .....

Address: .....

.....

.....

Telephone No.: .....

E mail address: .....

**Thank you for taking the time to complete this questionnaire.**

**Please return to, Kay Adams, by e-mail [adamk@entecuk.co.uk](mailto:adamk@entecuk.co.uk) by 27<sup>th</sup> July 2005**

Polytunnel Questionnaire to National Parks

**Name of National Park:** .....

**Contact name:** ..... **Contact tel. no.:** .....

**Contact e-mail address:** .....

**6. Are you aware of polytunnels as an issue affecting National Parks?**

☐

Yes, is an issue affecting National Parks

☐

No, is not an issue affecting National Parks

**7. Have they affected your National Park, either directly or on the margins?**

☐

No

☐

Yes, directly

☐

Yes, on the margins

☐

Yes, both directly and on the margins.

**8. Have you dealt with the issue of polytunnels, either via advice, applications or through enforcement action?**

☐

No

☐

Yes, have provided advice

- 
- ☐ Yes, via applications
- ☐ Yes, through enforcement action

**9. Has your authority developed a policy relating to polytunnels or produced guidance on them?**

- ☐ No
- ☐ Yes, have developed policy
- ☐ Yes, have produced guidance

**10. Is your understanding that polytunnels can be erected under Permitted Development Rights (PDR) as agricultural operations or require planning permission?**

- ☐ Polytunnels can be erected under PDR as agricultural operations
- ☐ Polytunnels require planning permission.

**11. What are the key development control issues which surround this kind of development?** e.g. visual impact, development in the open countryside, local economic viability/diversification? (Please list the top three issues)

4. ....
5. ....
6. ....

**12. Do you have examples of polytunnel development which illustrate any of the issues above?**

- ☐ No
- ☐ Yes (please state location and issue below)
4. .... issue.....
5. .... issue.....
6. .... issue.....

**Thank you for taking the time to complete this questionnaire.**

**Please return to Robert Deanwood, Entec UK Ltd, Gables House, Kenilworth Road,  
Leamington Spa, Warwickshire, CV32 6JX in the prepaid envelope provided by  
5th August 2005**