

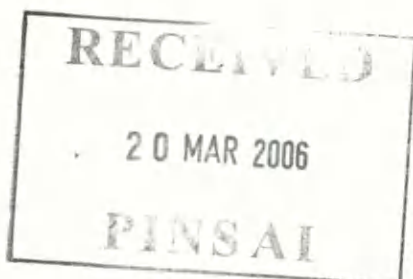
Our ref WM/1663/4
Your ref APP/W1850/c/06/2005983
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Planning Inspectorate
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Dear *Sirs*

RE: ENFORCEMENT NOTICE AND APPEAL, LAND AT PENNOXSTONE COURT, KINGS CAPLE, HEREFORDSHIRE REF: APP/W1850/C/06/2005983 COUNTRYSIDE AGENCY (LANDSCAPE, ACCESS AND RECREATION DIVISION) WRITTEN REPRESENTATION

With regard to the enforcement notice issued by the County of Herefordshire District Council and the subsequent appeal by Mr N J Cockburn, at the above site, the Countryside Agency (LAR) wishes to submit the following comments to the Planning Inspectorate:

- We support the enforcement action taken by Herefordshire Council, in this instance.
- We agree with the reasons for enforcement, outlined in Section 4 of the Enforcement Notice issued by Herefordshire Council.
- We endorse the representations made by the Wye Valley Area of Outstanding Natural Beauty (AONB) Joint Advisory Committee (with the exception of their support for Herefordshire Councils use of a Voluntary Code to regulate the use of polytunnels).

The Countryside Agency Landscape, Access and Recreation Division (LAR) is responsible for advising government and taking action on issues relating to:

- conserving and protecting our natural landscapes and all their characteristics.
- encouraging awareness of, access to and enjoyment of the countryside and green spaces.
- achieving the sustainable management and use of the countryside.



INVESTOR IN PEOPLE

Specifically, the Countryside Agency is responsible for designating AONBs and advising Government and others on how they should be protected and managed. AONBs are designated solely for their landscape qualities for the purpose of conserving and enhancing their natural beauty (which includes landform and geology, plants and animals, landscape features and the rich history of human settlement over the centuries).

The representation from the Wye Valley AONB Joint Advisory Committee is based on the 'Strategic Objectives' and 'Actions' from the Wye Valley AONB Management Plan (2004-2009). The production of Management Plans is a statutory requirement under the Countryside and Rights of Way (CROW) Act 2000, and requires relevant local authorities, in respect of an AONB, to act jointly in producing and publishing a plan "which formulates their policy for the management of the area of outstanding natural beauty and for the carrying out of their functions in relation to it"¹. The Plan is reviewed every five years and performs the following functions:

- Highlights the special qualities and the enduring significance of the AONB, the importance of its landscape features, and identifies those that are vulnerable to change.
- Presents an integrated vision for the future of the AONB as a whole, in the light of national, regional and local priorities.
- Sets out agreed policies incorporating specific objectives, which will help secure that vision.
- Identifies what needs to be done, by whom, and when, in order to achieve these objectives, and in some cases defines resources needed and from where they will be found.
- Identifies the means by which objectives and actions will be reviewed.

The importance and role of AONB Management Plans is underlined by the duty on public bodies, including local authorities, to have regard to the statutory purposes of AONBs in carrying out their functions. AONB Management Plans have also been considered as material considerations in Planning Appeals, for instance the North Wessex Downs AONB Management Plan was cited by an inspector when refusing permission for an 81m high wind turbine at Baydon Meadow, West Berkshire.

In addition to the primary purpose of AONBs, namely to conserve and enhance the natural beauty of the area (as defined in the CROW Act (2000)), the Countryside Agency and the Countryside Council for Wales support the following statement:

"In pursuing the primary purpose, account should be taken of the needs of agriculture, forestry and other rural industries and of the economic and social needs of the local communities. Particular regard should be paid to promoting sustainable forms of social and economic development that in themselves conserve and enhance the environment²."

¹ Countryside and Rights of Way Act, 2000, section 89(2).

² *Areas of Outstanding Natural Beauty: A Policy Statement*. Countryside Commission, 1991. CCP 356.



Planning Policy Statement 7 Sustainable Development in Rural Areas states that AONBs have been confirmed by 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.

The Countryside Agency's role in conserving and protecting our finest landscapes and promoting sustainable management and use of the countryside, gives us a balanced insight into some of the issues of using polytunnels. The Countryside Agency believes that polytunnels can have a significant impact on the landscape and can harm the visual amenity of the landscape and the special character associated with AONBs. However, we also recognise that they can benefit farm production and make a contribution to the local rural economy.

Due to the potential conflict represented by these interests the Countryside Agency considers that Herefordshire Council's adoption of a voluntary code for the assessment of the placement and duration of use of polytunnels is inappropriate and that where substantial polytunnels are proposed they should require planning permission for development, as defined in the General Permitted Development Order 1995.

This view is based on a number of appeal cases that have looked at particular aspects of Poly tunnels and the requirement for Planning Permission.

- *Skerritts of Nottingham Ltd v Secretary of State (2000)*
Permanence could be inferred from the presence of a structure over a period of years and that this need not be 365 days each year. “..just because a structure can be moved does not mean that it is not subject to planning control”.
- *Tuesley Farm v Waverley Borough Council (2005)*
“The polytunnels and associated mobile homes are of a size, permanence and physical attachment to the land surface comparable to a building operation”, this means that they are subject to the same rules as other built developments covered by planning. “After an 11 day inquiry, the planning inspector concluded that the polytunnels required planning permission but refused to grant it”. (Planning Magazine 19/12/05)
- *DCS No. 35190040 Garden Centre Poly tunnels Norfolk (2004)*
“He (the Inspector) found it necessary to establish whether the tunnels involved a building operation within the meaning of development under section 55(1) of the Town and Country Planning Act 1990. If they were, he reasoned, they would not be exempt under section 55(2)(e)”

“The inspector found that the polytunnels were substantial structures, being nearly 40m long, more than 8m wide and around 3m high. He noted that they had been built on the site and, with 24 tubular arches each, were not insignificant. He also found that the provision of anchor points set in concrete suggested a degree of



physical attachment beyond that of temporary protection from sun, wind and rabbits.”

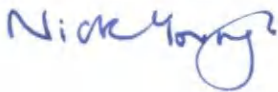
“He ruled that the tunnels represented building operations for which no permitted development rights were available under class B, part 6, schedule 2 of the General Permitted Development Order 1995.” (Planning Magazine 10/12/04)

The use of a voluntary code challenges these rulings as it effectively places polytunnels outside of the planning system and the tests applied to the GPDO in these appeal decisions. It also restricts democratic involvement in the planning decision as compliance with the code removes the obligation to undertake full public consultation and the requirement to take into account the full range of material considerations.³

It is not clear in this case if the appellant has entered into the voluntary code and failed to meet the conditions, or has never signed up to the code. The Countryside Agency’s view, however, is that this development harms the nationally designated Wye Valley Area Of Outstanding Natural Beauty. Furthermore, it should require close examination and public scrutiny through the planning process.

We support Herefordshire Councils view that the policies expressed in the Herefordshire & Worcester County Structure Plan and the South Herefordshire District Plan (CTC.1 & 2) have been contravened and that planning permission should not be granted as planning conditions cannot overcome the intrinsic harm to a nationally protected landscape that these polytunnels cause.

Yours faithfully,



NICK YOUNG
SENIOR COUNTRYSIDE ADVISER

³- Landscape Mitigation Statements for the development of Poly tunnels in AONB's are required by the Herefordshire voluntary code, however the Countryside Agency considers this to be insufficiently rigorous as they are not subject to external examination.

