



# Appeal Decision

Inquiry opened on 6th November 2007

by **Clive Whitehouse** BA(Hons) MCD  
MRTPI

an Inspector appointed by the Secretary of State  
for Communities and Local Government

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Decision date:  
8<sup>th</sup> January 2008

## Appeal Ref: APP/W1850/C/07/2041603

### Land at Pennoxstone Court, Kings Cagle, Herefordshire, HR1 4TX

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr N J Cockburn against an enforcement notice issued by Herefordshire Council.
- The notice was issued on 26<sup>th</sup> February 2007.
- The breach of planning control as alleged in the notice is: without planning permission the erection of polytunnels on the land shown edged red on the plan.
- The requirements of the notice are: (1). demolish the polytunnels, and (2) remove any materials that arise from the demolition of the polytunnels from the land.
- The period for compliance with the requirements is 60 days.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (c), (d) and (g) of the Town and Country Planning Act 1990 as amended.
- The inquiry sat for 8 days on the 6<sup>th</sup> to 9<sup>th</sup> and the 26<sup>th</sup>, 27<sup>th</sup>, 28<sup>th</sup> & 30<sup>th</sup> November 2007.

**Summary of Decision: The appeal is allowed in part on ground (d). The appeal is also allowed in part on ground (a), but otherwise the appeal is dismissed and the enforcement notice upheld with corrections and variations**

## Introduction and Procedural Matters

1. Pennoxstone Court Farm specialises in the production of strawberries, raspberries and blueberries. Polytunnels were used to a limited extent for growing soft fruit on the farm during the 1990s, but after about 2001 polytunnel coverage expanded significantly, so that by 2007 the peak coverage was about 26ha. The polytunnels are located in the fields around Pennoxstone Court and on two separate blocks of rented land; one to the north of Kings Cagle church, and the other about 1km to the east at Poulstone Court. The farm is within the Wye Valley Area of Outstanding Natural Beauty (AONB).
2. At the outset of the inquiry I considered it necessary to clarify the terms of the allegation in the enforcement notice, in view of the fact that polytunnels are periodically dismantled and moved. I expressed the view that an enforcement notice directed at operational development could only deal with structures or buildings that existed at the time of issue, rather than acting as a blanket prohibition on future development on other parts of the area. The parties did not dissent from that view, and it was recognised that it could be potentially time consuming for the local planning authority to exercise its enforcement

- powers where polytunnels are moved around, possibly requiring a succession of notices.
3. This raised the further question of “when is a polytunnel not a polytunnel”, since the usual practice at Pennoxstone is to roll back the polythene during the winter months, but to leave the supporting structure in place for a number of years to be re-covered each growing season. The polytunnels consist of metal legs, each with a Y-shaped attachment on top, to which curved metal hoops are connected in linked rows. Wires connect and stabilise the legs and hoops, and the polythene coverings are secured with ropes. In the winter the polythene is normally stored on top of the “Y” attachments.
  4. The Council’s analysis, with which I agree, is that a polytunnel becomes substantially complete when the polythene sheeting is first placed over the metal structure, but it does not cease to be a polytunnel when the polythene is rolled back, provided the metal structure remains in place.
  5. Various names and numbers are used by the parties in their evidence to refer to the different blocks of land. To avoid confusion, I will refer to the land north of Kings Caple church as Windmill Field and the land next to Poulstone Court, by that name. Where it is necessary to refer to individual fields around Pennoxstone Court, I will adopt the field names given by the appellant, as noted on the plan circulated at the inquiry.
  6. The enforcement notice plan includes one field at Lower Ruxton Farm, which had been rented by the appellant for fruit growing under polytunnels in the past. However, no polytunnels were in place on that field when the notice was issued and the appellant confirmed at the inquiry that it is no longer under his control. The parties agreed that it would be appropriate to exclude that field from the notice, and I will correct the plan attached to the notice accordingly.
  7. I carried out a preliminary inspection of the farm and some of the key viewpoints on the morning of 7<sup>th</sup> November, and an extended inspection of the farm and all the agreed viewpoints in the surrounding countryside during 29<sup>th</sup> November. Fruit was still being harvested at the beginning of November and significant areas of polytunnels were covered with polythene. By the end of November most of the polythene coverings had been rolled back for the winter, but the frameworks for the blocks of polytunnels generally remained in place. The submitted evidence includes photographs of the polytunnels at all seasons of the year.

### **Appeal on Ground (b)**

8. The corrected enforcement notice plan defines the land under the appellant’s control, but it does not identify the positions of the blocks of polytunnels that are subject to the notice. The appellant contends that the notice is defective because it includes significant areas, principally within the floodplain of the River Wye, where polytunnels have never been erected.
9. The parties agreed at the inquiry that the remedy is to include a plan that shows the positions of the polytunnels that were in existence when the notice was issued. This was subsequently agreed, and the relevant blocks are shown hatched blue on drawing No. DLA 1154/20, Rev A, plus the small green-coloured area at Poulstone Court. The yellow-coloured areas on that plan

denote areas where there were no polytunnels in place when the notice was issued, but where new polytunnels were erected during the summer months of 2007. The parties agree that those later polytunnels (the main area being in Garden Field) are not subject to the present enforcement notice.

10. I will deal with the appeal as relating to the polytunnels that were in place when the notice was issued, as identified hatched black on Plan 1, attached to this decision. This clarification deals with the matters raised under ground (b).

### **Appeal on Ground (c)**

11. The appeal on this ground is on the basis that there has not been a breach of planning control because the polytunnels do not constitute development for which planning permission is required.
12. The law has recently been clarified in respect of polytunnels by the case of *Hall Hunter Partnership v First Secretary of State* [2006] EWHC 3482 (generally referred to as the *Tuesley Farm* case). In that case the High Court upheld an Inspector's decision that, as a matter of fact and degree, the provision of polytunnels comprised a building operation and hence "development" within the meaning of the Town and Country Planning Act 1990 (the Act).
13. The statutory framework and legal principles for determining what constitutes development were dealt with fully in the *Tuesley Farm* case and are not in dispute here. Briefly, section 55 of the Act states that the meaning of "development" includes "the carrying out of building, engineering, mining or other operations on, over or under any land". Section 57 states that planning permission is required for the carrying out of any development of land. By the interpretations given in section 336(1) of the Act, "land" includes a "building", and "building" includes "any structure or erection".
14. In deciding what constitutes a building or structure, the case of *Cardiff Rating Authority and Cardiff Assessment Committee v Guest, Keen and Baldwins's Iron and Steel Co. Ltd.* [1949] sets out the three relevant factors of size, permanence and physical attachment. Those tests were confirmed in the planning context by the case of *Barvis Ltd v Secretary of State for the Environment* [1971], and they were applied in *Skerrits of Nottingham Limited v Secretary of State for the Environment, Transport and the Regions and Harrow LBC, Court of Appeal* [2000]. The *Skerrits* case concerned a marquee erected in the grounds of a hotel for eight months or so each year, which was held to be a building resulting from a building operation, and thereby "development". I will apply the three-part test of size, permanence and physical attachment to the polytunnels in use at Pennoxstone Court.

### **Size**

15. Each polytunnel is about 3m high and between 6.5m–7.5m wide; sufficient for tractor access and for workers to tend the crop and harvest the fruit under cover. The tunnels are linked together in blocks, the largest covering an area of 3.9ha, and others typically in the range between 1ha and 2.5ha. The polythene is not brought down to ground level, but is secured at the level of the "Y" attachments, so that each block covers a continuous space. The framework at the ends of each tunnel is reinforced with metal struts between

the first three legs and hoops (termed end kits) and, elsewhere, wires connect and strengthen the structure.

16. This design is commonly described as a "Spanish polytunnel" and is the same as the type erected at Tuesley Farm. In recent years, Spanish polytunnels have become the norm for most British commercial soft fruit producers; having replaced the open cultivation of soft fruit and the use of smaller "French" polytunnels.
17. In my opinion each block of polytunnels is a distinct and inter-connected structure. Each of the blocks on the appeal site has a substantial height and a ground coverage generally measured in hectares. If a large marquee on a hotel lawn was of sufficient size to be considered a building, then I have no hesitation in concluding as a matter of fact and degree that each block of polytunnels at Pennoxstone Court has a size commensurate with a building.
18. The appellant's planning consultant (who also gave evidence for the Hall Hunter Partnership at the Tuesley Farm inquiry) seeks to draw a distinction between the two sites on the basis that at Tuesley Farm the polytunnels were erected in larger blocks and over a larger area. However that does not alter my view that each of the blocks of polytunnels at Pennoxstone Court satisfies the size test.

### ***Permanence***

19. Each polytunnel on the appeal site is covered with polythene for about 5-6 months each year during the growing season, but the metal framework is normally retained for a number of years, with the polythene being rolled back and stored in the valley between the tunnels outside the growing season. The appellant explained that he generally aims to retain the polytunnel structure for the duration of the crop in the ground – typically three years for a strawberry crop and five or six years for a raspberry crop. Indeed, under the ground (d) appeal, the appellant claims that several blocks of polytunnels are immune from enforcement action, having existed for more than four years.
20. The Skerrits and Tuesley Farm cases provide guidance on the interpretation of "permanence" in the planning context. In both cases "permanence" is interpreted as being a matter of degree between the temporary and the everlasting. In the Skerrits case, it was found that the annual removal of the marquee did not deprive it of the quality of permanence. In the Tuesley Farm case the polytunnels were generally taken down and moved after three to seven months, but the Court was satisfied that even the shortest of those periods was of consequence in the planning context.
21. I conclude as a matter of fact and degree that the blocks of polytunnels at Pennoxstone have a sufficient quality of permanence to be considered buildings.

### ***Degree of Attachment***

22. The polytunnels are secured to the ground by metal legs that are specially designed with a screw end. Each leg is screwed into the ground to a depth of about 0.6m by teams of men using a hydraulic machine powered by a tractor. The legs are positioned every few metres, so that a 1 ha block of polytunnels would have many hundreds of legs. The legs support the hoops and the

polythene covering and provide sufficient anchorage to secure the polytunnel against wind damage. The polytunnels at Tuesley Farm were attached in a similar manner, and the Judge in that case observed that "it is not surprising" that the Inspector concluded "the polytunnels have a substantial degree of physical attachment to the ground". I too conclude that the polytunnels at Pennoxstone Court have a substantial degree of physical attachment to the ground.

### **Conclusion – Ground (c)**

23. In both the Barvis and the Skerrits cases, the approach taken to the question of whether there had been a building operation was to consider first whether there was a building, using the three-part test. If there was a building, then what had created it was a building operation.
24. I conclude as a matter of fact and degree that each block of polytunnels at Pennoxstone Farm, by virtue of its size, degree of permanence and physical attachment to the ground amounts to a building.
25. Each block of polytunnels is assembled on the land by teams of workers. The manufacturer's construction manual indicates that about 150 man-hours are needed to construct one hectare of polytunnels. The appellant has found that his workers can assemble the tunnels in less time than estimated in the construction manual, and comparisons were made with the evidence of labour input submitted to the Tuesley Farm inquiry.
26. In my opinion, whether the polytunnels at Pennoxstone Court are erected more quickly than had been the case at Tuesley Farm is of little consequence to the legal test. The fact that it takes teams of men to assemble the structures on the site only adds weight to my conclusion that these polytunnels are the result of building operations.
27. Other points are made on behalf of the appellant in an attempt to distinguish this site from the Tuesley Farm polytunnels, but those appear to me to be more to do with the planning merits of the case than with the legal test. It is not contended that, if the polytunnels are found to be development, they would qualify as permitted development under the Town and Country Planning (General Permitted Development) Order 1995.
28. I conclude that the polytunnels subject to the enforcement notice amount to development for which planning permission is required. The appeal on ground (c) fails.

### **Appeal on ground (d)**

29. This ground of appeal is on the basis that it was too late for the Council to take enforcement action in respect of certain blocks of polytunnels when the notice was issued, because they had existed for at least four years and had thereby become lawful by the passage of time. The relevant period in this case is between February 2003 and February 2007.
30. The appellant claims that five blocks of polytunnels have become immune from enforcement action. Those are: a small block of polytunnels in the south west corner of Lower Fishpool field; a block used as a propagation area in the walled garden nursery; a block in Plum Field immediately to the north of Pennoxstone

Court, and two substantial blocks within Windmill Field, north of the Church. The appellant estimates that lawful polytunnels account for approximately 25% of the polytunnels subject to the enforcement notice.

31. Mr Cockburn's own evidence on oath is corroborated by five statutory declarations made by a contractor, two consultants, an employee and a neighbouring farmer. An agricultural consultant's field notes from visits in 2001 and 2002 indicate that polytunnels existed in some of claimed locations, in those years, but the notes do not assist with the four years prior to the issuing of the notice.
32. The Council operated a voluntary code of practice for soft fruit producers between 2003 and 2006, under which growers submitted annual checklists and plans indicating the areas where polytunnels would be used. The returns for Pennoxstone for those years support the appellant's case, with the exception of the polytunnels in the walled garden nursery, which were omitted on two of the annual returns. However, Mr Cockburn explains that the nursery area has a permanent function which is not subject to periodic rotation, and it was not always included in the returns for that reason. The Council's aerial photograph with a date range of 1999-2000 clearly shows the propagation tunnels in the walled garden as one of the few blocks then in existence. In my view this supports the contention that they have remained in place for more than four years.
33. During the adjournment of the inquiry, the Council reviewed the evidence concerning lawfulness of the five blocks claimed by the appellant and announced at the resumed inquiry that it accepts that four are lawful. The only area remaining in contention between the parties is the block in Windmill Field closest to the Church (referred to in this context as area 4).
34. Although the Council has no contrary evidence from its own records concerning area 4, at the start of the inquiry Mr Kelly (the organiser of the Campaign for Polyunnel Control) submitted a number of photographs taken from near the Church that he believes challenges the claim to lawfulness. The photographs are dated 2004 and 2005 and, in Mr Kelly's view, show that polytunnels had been removed in their entirety over about half of area 4. A photograph taken by Mr Thomas of Kings Caple in 2005 shows a similar scene. Mr Kelly declined to give evidence in person but both he and Mr Thomas submitted sworn affidavits during the inquiry confirming the dates and locations from which the photographs were taken. The Council is satisfied that the photographs show conclusively that no polytunnels existed on that land at those times.
35. The photographs show that the strawberry beds in that part of Windmill field were covered in black plastic at ground level in March 2005 and by white agricultural fleece in April. The appellant considers that it is difficult to see the galvanised metal hoops and legs against that background, given the grainy quality of the enlargements of the photographs. He accepts that some hoops were removed from part of that field in 2005 but maintains that the legs and end kits remained in place, which he argues maintains the continuity of the structure.
36. In my opinion the photographs demonstrate that there were no polytunnels in parts of area 4 in April 2004 and in March and April 2005. Close scrutiny of the

photographs, and comparison with adjoining areas where polytunnels were clearly present, indicates to me that there were no legs or end kits in place either at those times. Even if those elements had been left in place, that would not be sufficient in my opinion to claim the existence of a block of polytunnels. I conclude that the polytunnels that now exist in that part of area 4 were erected less than four years before the notice was issued and are therefore not lawful and not immune from enforcement action.

37. The 2004 and 2005 photographs clearly show the frames of polytunnels in existence over the whole of the western end of area 4 and in area 5 to the north. The Council conceded at the inquiry that the block of tunnels on the western part of area 4 could also be regarded as lawful. On the evidence available, it is difficult to be precise about the boundary of that block, but I estimate that the photographs show about half of area 4 with polytunnels, and half without.
38. Taking the documentary, photographic and oral evidence together, I conclude on the balance of probability that certain blocks of polytunnels had been in continuous existence for at least four years at the time the notice was issued. It was therefore too late for the Council to take enforcement action in respect of those blocks, and they are lawful. The lawful blocks of polytunnels are: the block in the south west corner of Lower Fishpool field; the block used as a propagation area in the walled garden nursery, and the block in Plum Field immediately to the north of Pennoxstone Court, denoted respectively as areas 1, 2 & 3 on the plan attached to Mr Cockburn's statutory declaration dated 28<sup>th</sup> March 2007. In Windmill Field, the block in the western half of area 4 and the block denoted as area 5 on the statutory declaration plan are lawful. The appeal on ground (d) succeeds in part. Lawfulness applies to the existing structures on those sites and would be lost if they were dismantled.

### **Appeal on Ground (a)**

39. The appeal on this ground is on the basis that planning permission should be granted for the blocks of polytunnels existing on the site at the time the enforcement notice was issued. The blocks that have been demonstrated to be lawful do not need to be considered under this ground.

### **Planning History**

40. A brief review of the planning history of the site and the Council's approach to polytunnels is contained in the statement of common ground, and is relevant to the planning background of the case.
41. When Spanish polytunnels began to appear on a significant scale on a number of soft fruit farms in Herefordshire from about 2001, there was uncertainty as to whether planning permission would be required, and the Council's initial response in 2003 was to introduce a voluntary code of practice as a means of monitoring the situation. In 2004 the Council revised the code, to the effect that it would tolerate the use of polytunnels on the same site for two successive years, after which planning permission would be required. The policy required no return to the same site for two years. The annual returns were then used as a means of assessing compliance and, thereby, the need for planning permission. The appellant's farming practice has generally required a minimum of three successive seasons of polytunnel use for each strawberry

crop, and a longer period for raspberries and blueberries, and he considered that it would be impractical to adopt a two-year rotation.

42. In 2005 the Council issued an enforcement notice in respect of polytunnels in Lower Fishpool field only, but this was held in abeyance pending preparation of a planning application for all of the areas then being used for polytunnels. The application was submitted in 2006, but was withdrawn in the light of an officer recommendation for refusal. Discussions continued between the appellant and the Council with a view to a revised application. The first enforcement notice was withdrawn in January 2007, but replaced shortly afterwards by the present notice.
43. The High Court decision on the Tuesley Farm case was issued in December 2006, and this caused the Council to reconsider its approach to polytunnels. In March 2007 the Council's cabinet decided to abandon the Voluntary Code of Practice and adopted a policy that all new polytunnels should be treated as development requiring planning permission. The Council also initiated the preparation of Supplementary Planning Guidance on polytunnels in consultation with growers and other interested parties. At the time of the inquiry, work on the guidance was ongoing, but no draft document had been issued.
44. The appellant, supported by other growers, challenged the Council's cabinet decision of March 2007 in the High Court. It was stated at the inquiry that the Council had submitted to judgement and had rescinded that decision, on the basis that it had been wrong to state that all polytunnels require planning permission. This does not alter the Council's position that the polytunnels at Pennoxstone Court require planning permission.

### **Main Issues**

45. I consider the main issues in this case to be.

(i) The effect of the polytunnels on the natural beauty of the landscape and the countryside of the Wye Valley Area of Outstanding Natural Beauty (AONB)

(ii) The effect of the polytunnels on the setting of the listed Church of St John the Baptist, Kings Cuple

(iii) The weight to be attached to the benefits of the polytunnels in terms of the quantity and quality of the soft fruit produced, the contribution made to the rural economy and the substitution of locally grown fruit for imported fruit.

### **Effect on Wye Valley AONB**

#### ***Planning Policy Framework***

46. The Wye Valley AONB is regarded as one of the finest lowland landscapes in Britain. The river is the centrepiece and in Herefordshire it meanders in great loops through meadows overlooked by rolling farmland. Kings Cuple is located on a spur in the centre of a large river meander, and the church spire at the highest point is a landmark visible over a wide area. On the opposite bank of the Wye, the village of Hoarwithy occupies the steep slopes close to the river.
47. The primary purpose of AONBs is to conserve and enhance natural beauty. AONBs share equal status with National Parks in terms of scenic beauty and



landscape protection. National planning policy in Planning Policy Statement 7: Sustainable Development in Rural Areas (PPS7) states that "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".

48. The development plan for the area comprises the Regional Spatial Strategy for the West Midlands (RSS) and the Herefordshire Unitary Development Plan, adopted in 2007 (UDP). Of particular relevance is UDP policy LA1 concerning development in AONBs. This gives priority to the protection and enhancement of the natural beauty and amenity of the area in the national interest, in accordance with a management plan. Only small scale development is to be permitted, and only where it can be shown that the natural beauty of the landscape is not adversely affected and where the development is necessary for the economic and social well-being of the area. Exceptions will only be permitted where the development is of greater national interest than the purposes of the AONB; where there is no alternative site outside the AONB and where any detrimental effects on the landscape can be adequately mitigated.
49. The constituent local authorities within the AONB have produced a Management Plan for the area for the period 2004-2009.

#### ***Visual Impact of Polytunnels***

50. The main adverse visual impact of the polytunnels results from the large expanses of shiny, white polythene coverings, which are an eye-catching and obviously un-natural element in the landscape.
51. At Pennoxstone some of the tunnels are covered with polythene in February and March for an early crop of strawberries in May/June; whereas mid and late season crops are covered from July/August until October/November. Therefore, although each block of polytunnels may be covered for about five months each year, there are significant areas of polythene to be seen in the fields for the whole of the period from February to November. Summer foliage on the hedgerows provides a measure of mitigation for certain fields and from certain viewpoints, but the polytunnels are most exposed to view between February and May and, in the autumn, between September and November. The uncovered polytunnel structures have much less landscape impact, generally being seen at some distance against the ground or against a backdrop of trees or hedges.
52. I understand that research into alternative, less visually obtrusive materials for covering polytunnels is being carried out in various quarters, but there is no early prospect of a viable alternative to white polythene.
53. The Council's approach to polytunnels has recognised that regular rotation can reduce their adverse visual impact, since the harm is not a constant feature in any one location. However, this depends on tunnels being moved to a different site after one or two seasons. I understand that some other growers in Herefordshire have used polytunnels on a two-year rotation, but this has not been the usual practice at Pennoxstone. I saw that a very high percentage of the suitable land outside the floodplain is now given over to soft fruit growing, leaving limited scope for rotation. Thus, in the last three or four years

polytunnels have become an annual feature in all of the suitable fields around Pennoxstone Court.

54. Public opinion on the acceptability of polytunnels in the area is divided, as evidenced by the range of opinions both for and against that were expressed during the two inquiry sessions devoted to third party representations. A similar range of opinions is reflected in the written representations. Kings Caple Parish Council was reported to be split on the issue, and had decided not to make any formal representations, although a number of Parish Council members gave their personal opinions. The group of parishes that includes Hoarwithy objects to the polytunnels. In addition to the objections from local amenity organisations and residents, there is some evidence from walkers and those providing tourist accommodation that visitors to the area comment that the polytunnels spoil the natural beauty that they expect to find in the Wye Valley.
55. The Landscape Architects acting for the respective parties have both based their assessments on the guidelines produced by the Landscape Institute and Institute of Environmental Management and Assessment. They have agreed the representative viewpoints from public vantage points on roads and paths in the surrounding countryside. There is only one long distance view (from more than 2km), which the Council assesses as having a slight adverse effect. Otherwise, the visual envelope of the polytunnels is confined to middle and short distance views within the valley. For anyone moving around the area, many of the agreed viewpoints consist of glimpses through field gates and gaps in hedges, but there are other continuous views from sections of roads and footpaths. The fullest views of the polytunnels are obtained from roads, pathways and individual houses on the opposite side of the valley. Because the polytunnels are spread over a wide area, there is no single viewpoint that includes them all.
56. The parties have based their landscape assessments on the three separate parcels of land defined on the enforcement notice plan. They refer to the fields around Pennoxstone Court owned by the appellant as Area 1, and to the two detached areas as area 2 (Windmill Field) and area 3 (Poulstone Court). However, it is evident to me that some fields are much more prominent in the landscape than others, and I consider it necessary to differentiate between the individual fields around Pennoxstone Court.
57. I will therefore assess the visual impact of the polytunnels subject to the notice on a field-by field basis, having regard to the scheme of tree and hedge planting proposed by the appellant, and to the positions of those polytunnels that have become lawful.

### ***Front Meadow and Wetlands***

58. Front Meadow and Wetlands have been combined to form a continuous, south-facing field, sloping down from the house at Pennoxstone Court to the meadows bordering the River Wye. "Wetlands" appears to be a misnomer considering the soil and aspect, but I understand that the name is derived from the old name of wheat lands. When the enforcement notice was issued there were about 7.7ha of polytunnels on these combined fields, and they are the most recent area to be developed, having been first used for that purpose in

2004. Consequently, none of the present polytunnels have achieved lawful status.
59. The south facing aspect that makes these fields ideal for soft fruit growing also makes them very prominent when seen from positions on the opposite side of the valley. The polytunnels in these fields are particularly prominent from a sequence of viewpoints along the minor road that descends into the valley from the south; from a public footpath along the banks of the river (path SK12), as well as from a higher level footpath through fields (path HN9).
60. The appellant's Landscape Consultant's assessment of the area that includes these fields recognises that the polytunnels at present have a high impact on the character of the area, but he contends that landscaping can reduce the adverse impact to an acceptable level. He points out that existing field boundary hedges have been allowed to grow for a number of years and will be allowed to grow further so that they increase the screening effect and serve as windbreaks to protect the polytunnels. It is also proposed to extend the copse below Garden Field across the bottom of Wetlands, and to plant new hedges along the contours within the fields to break up the blocks of polytunnels and improve screening. The appellant's Landscape Consultant's assessment is that within about ten years these layers of existing and proposed planting would significantly reduce the adverse landscape impact of the polytunnels.
61. The Council considers that the high adverse visual impact can not generally be mitigated by planting and that, even after 10 years of growth, the situation would still be unacceptable, particularly when trees and hedges are not in leaf. The Council also refers to the fact that part of the grounds of Pennoxstone Court are identified as an unregistered park or garden, to be protected from adverse development under UDP policy LA4. The area identified includes the polytunnels on Front Meadow.
62. In my opinion the presence of large expanses of white polythene coverings in these fields for up to nine months each year is a strikingly discordant and unnatural feature in the farmland landscape. In my assessment, the fact that these fields lie on the valley side makes it impossible to fully mitigate the visual effect of the polytunnels. There are points on the opposite side of the valley where it is possible to look down on the polytunnels, and no amount of hedge planting would overcome the adverse visual effects from that angle. I accept that improved screening could be achieved in views from the riverside footpath, but I am not convinced that it would be fully effective for all of the months when the polytunnels are covered. Furthermore, the harm would continue with little abatement for years until the new planting became well established.
63. Concerning the unregistered parkland, the Council's aerial photograph dated as 1999 or 2000 shows that Front Meadow was then in arable cultivation with no evidence of the former parkland. I consider that what little remains of the unregistered parkland does not add significant weight to my conclusions on the landscape impact of the polytunnels.
64. Taking the effects from all the viewpoints together, I consider that the polytunnels in these fields have a serious adverse effect on the natural beauty

of the landscape and the countryside of the AONB that can not be adequately mitigated.

65. Below Wetlands, a small area of polytunnels (about 0.8ha) has been laid out in one of the riverside meadows. These are in quite a prominent and open position. In addition, although this is not an area that floods regularly, it is within the flood risk area defined by the Environment Agency. It was clarified on behalf of the appellant at the inquiry that the requirements of the enforcement notice are not contested so far as this area is concerned.

### ***Lower Fishpool Field***

66. Lower Fishpool field is in a similar valley-side position as Wetlands, but with a more westerly slope and it is partly divided by a hedge. About 5 ha of polytunnels were in existence when the notice was issued. A block of tunnels in the south west corner is lawful, but that accounts for a small percentage of the coverage and in my view it does not significantly alter the context for the main blocks of polytunnels in that field.
67. These polytunnels are very prominent when seen from elevated footpaths HN9, HN10, HN11 and H12 on the opposite side of the valley, and from a number of houses built on the steep valley sides at Red Rail. There are filtered views of the polytunnels in this field from the road alongside the river as it approaches Hoarwithy.
68. For very similar reasons as set out in relation to Wetlands and Front Meadow, above, I consider that the polytunnels in Lower Fishpool field have a seriously detrimental effect on the natural beauty of the landscape and countryside of the AONB. I also consider for the same reasons that the tree and hedge planting offered in mitigation would not be sufficient to overcome the adverse visual effect.

### ***Packhouse Field***

69. This is one of the smaller fields, containing about 2ha of polytunnels. It is located to the north of the buildings at Pennoxstone Court and further from the river than Lower Fishpool. This field includes blueberries, which grow on low bushes with a long cropping life. The polytunnels are well screened by a belt of mature oak and pine trees along a private access to the farm and by trees around a pond and well developed windbreaks. Proposals to reinforce the planting along the private access will further reduce the impact in time. There are glimpses of the polytunnels in this field from a small number of viewpoints, but in my assessment the adverse impact on the landscape is slight. To the east are the lawful polytunnels in Plum Field, which are similarly well screened.

### ***Field adjacent to Poulstone Court***

70. This field is about 1 km to the east of Pennoxstone Court. It extends to about 5ha, and about half was under polytunnels when the notice was issued. In terms of the landform, this field is similar to Wetlands in having a south-facing valley-side position. However, in this case the parties have identified few public viewpoints, largely because the farmland on the opposite side of the valley does not have public access. The main views are from two specific points on the minor road near Sellack graveyard, where the polytunnels are in

full view, and a partial view near Poulstone Court. Other than those, there are surprisingly few public viewpoints, given the valley-side position of the field.

71. Poulstone Court is operated as a conference centre and stands in a parkland setting classified as an unregistered park and garden under UDP policy LA4. Some of the parkland has been lost to arable cultivation but the immediate setting of the buildings retain a parkland character with formal gardens, pasture and specimen trees. In this case I consider that the close proximity of the polytunnels has some adverse effect on the character and setting of the unregistered parkland.
72. The appellant has indicated an intention to remove the polytunnels from the field adjacent to Poulstone Court after 2008 in his projections of intended future polytunnel locations.
73. I conclude that the polytunnels adjoining Poulstone Court have a moderately adverse effect on the landscape of the AONB.

### ***Windmill Field***

74. This is a large field in a broad hollow above and to the east of the main river valley. The landform confers a high level of visual containment, with the exception of views from the churchyard of St John the Baptist, located on a steep promontory to the south.
75. The appellant's records indicate that there were about 11 hectares of polytunnels, occupying about 60% of the field when the enforcement notice was issued. Two of those blocks have been demonstrated to be lawful under ground (d). It was explained at the inquiry on behalf of the appellant that it would be possible to replace the soft fruit crops in the lawful sections without removing the polytunnel structures, so as not to forfeit lawfulness.
76. One block of polytunnels with an area of about 1.6ha at the northern end of the field has been completely removed since the notice was issued and the land ploughed for an arable crop. I consider that the enforcement notice has been complied with in respect of that block by its removal. In my view any replacement with a new block of polytunnels in that position would be an act of development for which a separate planning permission would be required. Therefore, the only polytunnels in Windmill Field that remain to be considered under ground (a) are those erected on the eastern half of area 4, in the positions where the 2004 and 2005 photographs showed there to be no polytunnels.
77. The views from local roads consist of glimpses through field gates and gaps in hedges. In most of those views the lawful polytunnels denoted as block 5 appear in the foreground. A footpath runs close to the eastern edge of the field behind a dense hedge that largely screens views into the field. There are some filtered views from a row of bungalows to the east, but the other roads through the village of Kings Cople provide no viewpoints of the polytunnels.
78. The Church at Kings Cople is slightly detached from the village, and it provides the main viewpoint. A steep field in a separate ownership lies between the Church and Windmill Field. From the graveyard on the north side of the Church, and the footpath leading from it, there are extensive views towards

Hoarwithy, and a large area of polytunnels is visible in the foreground at the foot of the hill.

79. In the event of planning permission being granted, the appellant proposes a landscaping scheme that would cut out some of the viewpoints and add new hedgerows to break up the field. Eventually these measures would mitigate the limited views from local roads. However the elevated position of the churchyard reduces the potential to screen views from that position. The appellant has obtained the agreement of the intervening landowner to carry out hedge planting adjacent to the church boundary, which could reduce the visual impact to some extent, but not completely.
80. The Council refers to the unregistered parkland at Aramstone, which extends to the minor road at the northern edge of Windmill Field. The contours are such that Windmill Field is not seen in the same context as the parkland. I do not consider that the polytunnels, and more specifically those the subject of the deemed planning application, have a significant adverse effect on the parkland.
81. The large area of polytunnels in Windmill Field clearly has a significant detrimental effect in views from the Church. However, I estimate that roughly two thirds of the polytunnels that existed in Windmill field at the time of my inspection are lawful, and this sets the context for the remaining third. The majority of the visual harm can therefore be attributed to the lawful polytunnels, and it is the additional harm resulting from the single block for which planning permission is required that is to be assessed. In my assessment that block causes little additional harm to the landscape.

### ***Conclusion on First Main Issue***

82. From my field-by-field assessment, above, I conclude on the first main issue that effect of the polytunnels on the natural beauty of the landscape and countryside of the AONB varies from being seriously adverse to slight, according to the particular characteristics of each location.

### **Effect on Setting of St John the Baptist Church**

83. The Church is a Grade 1 listed building dating from the 13<sup>th</sup> and 14<sup>th</sup> centuries. Section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires that special regard shall be had to the desirability of preserving a listed building or its setting in considering whether to grant planning permission. There is no definition of what constitutes the setting of a listed building, but national advice in Planning Policy Guidance 15: Planning and the Historic Environment is that the concept should not be interpreted too narrowly.
84. It would appear that the Church was purposely built on top of the hill as a landmark. In my view it is reasonable to draw a distinction between the Church spire as a landmark in the wider landscape, and the more immediate setting of the listed building. The nearest polytunnels to the Church are in Windmill Field about 120m to the north, and I think it is reasonable to regard those as being within its setting. However, I consider that the polytunnels around Pennoxstone Court fall to be considered within the wider landscape. UDP policy HBA4 states that development proposals that adversely affect the setting of a listed building will not be permitted.

85. The polytunnels in Windmill Field are not visible when approaching the Church from the front. It is only from the graveyard behind the Church that they are prominent. For the reasons given in paragraph 81, above, the majority of the harm to the setting of the Church on that side derives from polytunnels that are lawful.
86. The Council's Conservation Officer expressed the opinion at the inquiry that views towards the Church from the surrounding area are a more important aspect of its setting than views outward from the church yard. From that perspective, the particular block of polytunnels that remain to be considered under this ground has little impact because it lies about 20m below the level of the churchyard, and so does not intrude into the impressive outline of the Church on the hilltop. Also, that block is positioned behind the two areas of lawful polytunnels in views towards the Church. One of the Council's photographs chosen to illustrate the effect on the setting shows only the lawful polytunnels referred to as area 5. From my site inspection, I also note that the photograph was taken from within the field, and not from the public footpath behind the hedge, from where the polytunnels are well screened.
87. I conclude on the second main issue that the polytunnels which are the subject of the deemed planning application within Windmill Field cause no significant additional harm to the setting of the listed building, over and above that caused by the lawful polytunnels.
88. The Council raised the effect of the polytunnels on the setting of the village, a matter covered by UDP policy LA3. In the case of Kings Cuple I consider that the main issue is the effect on the setting of the listed Church, since the rest of the village lies for the most part beyond the visual envelope of the polytunnels.

### **Benefits of Polytunnels**

89. It is necessary to weigh against the harm to the landscape the benefits of the use of polytunnels at Pennoxstone Court. There is no dispute that they have enabled greater quantities and better quality of soft fruit to be produced, nor that the success and viability of the business has made a positive contribution to the rural economy.
90. Pennoxstone Court has been farmed by the same family for several generations and it is a member of a co-operative that provides marketing expertise and research and development into new fruit varieties. It is in the middle range of UK soft fruit producers. It is one of only two farms in the AONB in Herefordshire that produce soft fruit under polytunnels, but there are many more growers using polytunnels in the non-AONB parts of the district. The appellant considers that the microclimate within the valley and the well-drained gravelly soil make Pennoxstone Court ideal for soft fruit growing.
91. Planning policies at national, regional and local levels recognise the importance of the agricultural sector. PPS7 advises authorities to support development proposals that enable farming to become more competitive, sustainable and environmentally friendly and to adapt to changing markets. Herefordshire is part of a Rural Renaissance Zone defined by the Regional Spatial Strategy for the West Midlands (RSS). Policy PA15 seeks to promote agriculture and farm diversification, including new and innovative crops, on-farm processing and local marketing.

92. UDP policy E13 deals with agricultural development and the supporting text refers to the need to balance landscape impact against the operational needs of agriculture, recognising that necessary developments are often prominent in the rural landscape.
93. The Management Plan for the Wye Valley AONB for the period 2004-2009 seeks to reconcile the sometimes conflicting aims of conserving and enhancing natural beauty and the needs of agriculture. This includes reference to the supplementary purposes for AONBs, developed by the Countryside Commission and the Countryside Council for Wales. These state that "In pursuing the primary purpose, account should be taken of the needs of agriculture, forestry and other rural industries and the economic and social need of the local communities". It also states that "It is neither possible nor desirable to "fossilise" an area, and we must aim to keep a living and working countryside", and "the production of food must return to being a viable business".
94. Clearly, the recent development of large-scale polytunnel use has brought into stark opposition the aims of protecting the landscape, whilst supporting a viable farming industry.
95. There are two main benefits of polytunnels for British growers. They protect the developing fruit from rain damage, thereby greatly reducing losses from rot and fungus, whilst allowing continual picking at harvest-time, unconstrained by the weather. Mr Cockburn estimates that the wet summer of 2007 would have resulted in the loss of about 50% of his crops without polytunnels. Secondly, they extend the growing season, allowing fruit to be harvested from May to November, instead of being limited to the traditional June/July period. No additional heating or lighting is used to extend the growing season. At Pennoxstone the fruit is graded and packed on-site and is mostly sold in supermarkets in the midlands and south west.
96. According to the national soft fruit trade association and a fruit marketing company, British strawberry and raspberry production has increased more than five-fold since 1996; most of that growth being attributable to the use of polytunnels. Ninety percent of strawberries and 98% of raspberries are now grown under polytunnels, compared with no raspberries and only 4% of strawberries ten years ago. The use of polytunnels has allowed the appellant and other growers to supply a growing demand for fresh fruit in response to national healthy eating campaigns such as "five a day".
97. A further indication of the transformation that has taken place in British soft fruit growing is that in 1996, 60% of UK sales were supplied by domestic growers, whereas in 2007, 95% of all berries sold in the UK were grown in the UK. This substitution of local fruit for imported fruit has therefore resulted in significant sustainability benefits in reducing the international transportation of fruit by air and road (the food miles issue). For instance, until recent years fruit was air-freighted from California as the main source of late summer and early autumn soft fruit, but those imports have been eliminated. Nationally, it is calculated that import substitution in 2007 is valued at £110 million. The contribution made by Pennoxstone Court must be a small percentage of the national figure, but nonetheless, I consider that weight can be attributed to its share of the overall success.



98. Soft fruit growing, picking and packing is a labour intensive activity, and the Council accepts that the expansion of the business at Pennoxstone Court has made a positive contribution to the rural economy. The farm currently employs 140 people, of which 12 are permanent positions and 128 are seasonal jobs from April to October. By contrast, a local farmer with about 400 ha of arable land said that he employs only one worker in addition to himself. Seasonal labour is recruited mostly from Eastern European countries under the Home Office approved Seasonal Agricultural Workers Scheme. The seasonal workers are accommodated in caravans laid out in a wooded area next to the farm buildings, and those are not subject to enforcement action. The appellant estimates that the seasonal workers spend about two thirds of their wages locally and save about one third to be spent in their home countries. Pennoxstone Court is therefore an example of a reversal of the trend of falling agricultural employment that has changed the character and demographics of the countryside. The AONB Management Plan observes that "Most of our rural landscapes are oddly quiet now that they are increasingly occupied by people who do not work in the villages and who are not there during the day".
99. An agricultural consultant and business advisor employed by the appellant calculates that Pennoxstone Court Farm purchases over £1 million worth of goods and services in the UK annually, helping to support 30 full-time jobs in supplier companies. Some of those are national businesses, but there are letters of support from about a dozen local agricultural suppliers that benefit directly from the success of the soft fruit enterprise at Pennoxstone.
100. I conclude on the third main issue that the benefits of the polytunnels in enabling the production of increased quantities and quality of soft fruit; the sustainability benefits of reducing food miles, and the positive contribution made to the rural economy are all matters to which considerable weight should be accorded in the balance of considerations.

### **Other Matters**

101. Towards the end of the inquiry, the Council clarified its position in the light of the evidence then available, and indicated that it accepts in principle that a balance could be struck that would allow for a reduced scale of polytunnel coverage on some of the land in question. Without specifying any areas, the Council's current view is that in the most sensitive areas there is a case for not allowing any polytunnels at all; in the least sensitive areas permanent installations may be acceptable and in intermediate areas temporary installations may be permissible, subject to rotation. In the Council's view the "all or nothing" approach adopted by the appellant is not a reasonable or necessary position to take.
102. Following the Council's clarification of its position, the appellant stated that he intends to prepare a revised planning application, and this was welcomed by the Council. In my view a comprehensive planning application would have the flexibility to deal with the rotation of polytunnel areas, which is not available under the deemed planning application arising from the present enforcement notice, which deals only with existing structures.
103. It was reported to the inquiry in respect of the Tuesley Farm site in Surrey that in November 2007 Waverley Borough Council had resolved to grant

planning permission for a reduced coverage of polytunnels, subject to a section 106 agreement and a protocol for a rotation system, notwithstanding that an enforcement notice had earlier been upheld by an Inspector and by the High Court. The approved scheme at Tuesley Farm would allow up to 20ha of polytunnels within a holding of 190ha.

104. I recognise that the rejection of the ground (a) appeal in its entirety would have severe financial consequences for the business at Pennoxstone Court. However, I agree with the Council that the evidence does not point towards an “all or nothing” outcome. Whilst reduced polytunnel coverage would have an impact on current profitability, the farm has evidently operated as a viable business with fewer polytunnels in the recent past.
105. There was some discussion about the option of completely relocating soft fruit production out of the AONB, but I accept the evidence that this is not a realistic option for the appellant, given the limited availability of land of the necessary quality and other financial and personal constraints.
106. The Environment Agency has confirmed that it is satisfied with the arrangements made at Pennoxstone Farm for water abstraction from the River Wye for the trickle irrigation systems and for the management of surface water.
107. Issues concerning farming practices, such as the use of fleece at ground level to protect crops before the polytunnels are covered; the claimed reduction in pesticide use resulting from polytunnels and fertilizer usage are matters outside planning control.

### **Conclusions on Ground (a) Appeal**

108. I turn now to balance all the relevant evidence for and against the polytunnels, and to reach conclusions on each separate area for which planning permission is sought.
109. I consider that Front Meadow, Wetlands, the small block below Wetlands and Lower Fishpool are the most sensitive areas in landscape terms, where mitigation planting would not overcome the harm to the landscape. I consider that the polytunnels in those fields conflict with the protection accorded to AONBs in national policies and with UDP policy LA1. I conclude that those polytunnels cause serious harm to the natural beauty of the landscape and the countryside of the Wye Valley AONB and that this harm is not outweighed by the acknowledged benefits. I will uphold the requirements of the enforcement notice in respect of the polytunnels in those fields.
110. The field adjacent to Poulstone Court is a less clear cut case because there are fewer public vantage points. Taking account of the appellant’s stated intention to withdraw polytunnels from that field, and their effect on the park and garden at Poulstone Court, I conclude on balance that the enforcement notice should be upheld. I consider that the polytunnels that were being erected at the time of the inquiry on part of that field are outside the scope of the present enforcement notice because they were not in existence when the notice was issued. It would be a matter for the Council to consider in the context of a future planning application whether or not the temporary siting of polytunnels might be acceptable as part of a rotation regime.

111. In Windmill Field, I conclude that the polytunnels on the eastern half of area 4 cause no unacceptable harm to the landscape or to the setting of the listed Church, over and above the harm caused by the lawful polytunnels. In my opinion any harm is more than outweighed by the benefits of the polytunnels and the planting scheme proposed for that area. I consider that the particular block of polytunnels does not conflict with UDP policies LA1 or HBA4. I intend to allow the appeal and grant planning permission for that block, subject to conditions.
112. In Packhouse Field, the harm to the landscape is slight, and I consider that the balance of considerations is clearly in favour of continued use for polytunnels. I will allow the appeal and grant planning permission for that block.

### **Planning Conditions**

113. There was discussion at the inquiry on draft conditions that might be appropriate in the event of planning permission being granted. I will consider those that are appropriate to the two blocks of polytunnels for which I intend to grant planning permission
114. Because the function and design of the tunnels is to provide only seasonal cover for the duration of a particular crop, I consider that it would be inappropriate to grant a permanent permission. Neither of the blocks are newly erected, and I consider that permission for a further two years would be reasonable and in line with the customary farming practice at Pennoxstone Court. A temporary consent would also give the Council the opportunity to review the case for polytunnels on a rotational basis. To minimise visual harm, the permitted blocks of polytunnels should not be covered with polythene for more than 6 months in any year.
115. The appellant places emphasis on tree and hedge planting, and I consider that it would be essential for a detailed scheme to be submitted for the Council's approval, and carried out to a timetable.
116. The other draft conditions discussed are either not relevant to the areas permitted, or they deal with matters that in my view go beyond what can reasonably be required in considering the deemed planning application.

### **Appeal on Ground (g)**

117. The enforcement notice requires compliance within 60 days, and the appeal on this ground seeks a longer period for compliance. The appellant requests an extension to allow existing polytunnels to be used at least until the end of the next growing season in 2008. The Council confirmed at the inquiry that it would not object to the period for compliance being extended to the end of the 2008 growing season.
118. I am mindful that the adverse effect on the landscape is serious in those locations where the enforcement notice is to be upheld, but I have some sympathy for the appellant's predicament, since he has invested heavily and built up the soft fruit business over a period of years in the belief that he was not in conflict with the planning system; that is until the law relating to polytunnels was finally clarified by the Tuesley Farm case. I appreciate that

business commitments are such that the adverse financial consequences would be greatly magnified by a 60 day compliance period. An extended period would allow time for the promised planning application to be considered and for an orderly reduction in polytunnel coverage. On balance, I agree with the parties that the period for compliance should be extended. I will vary the notice to require compliance not later than the end of 2008.

### **Overall Conclusions**

119. From the evidence at the inquiry I conclude that the plan attached to the enforcement notice is incorrect, in that it does not identify the blocks of polytunnels that existed at the time of issue. It also includes one field not under the appellant's control, where no polytunnels were then in existence. I attach to this decision Plan 1 showing the corrected land area and the agreed positions of the blocks of polytunnels existing at the time of issue. I will also correct the allegation in the notice to make it clear that it is directed at those polytunnels.
120. As to the appeal on ground (d) I am satisfied on the evidence that the appeal on this ground should succeed in respect of the polytunnels described in paragraph 38, above. In view of the partial success on legal grounds, the application for planning permission deemed to have been made under section 177(5) of the 1990 Act as amended does not fall to be considered for those polytunnels.
121. For the reasons given above, and having regard to all other matters raised, I conclude that the appeal on ground (a) should succeed in part only, and I will grant planning permission for one part of the matter the subject of the enforcement notice, but otherwise I will uphold the notice with corrections and variations and refuse to grant planning permission on the other part.
122. I attach to this decision Plan 2 showing the approximate positions of those blocks of polytunnels that are lawful; those for which temporary planning permission is granted and those required to be removed.

### **Formal Decisions**

123. I direct that the enforcement notice be corrected by the substitution of Plan 1 and Plan 2 attached to this decision for the plan attached to the enforcement notice, and referred to in paragraphs 2 and 3 of the notice. I correct the allegation in the notice by the deletion of paragraph 3 and the substitution of the following paragraph.

#### **THE MATTERS WHICH APPEAR TO CONSTITUTE THE BREACH OF PLANNING CONTROL**

Without planning permission the erection of polytunnels in the positions shown hatched in black on Plan 1, attached to this decision.

124. I allow the appeal on ground (d) in respect of the block of polytunnels in the south west corner of Lower Fishpool field; the block used as a propagation area in the walled garden nursery and the block in Plum Field immediately to the north of Pennoxstone Court, denoted respectively as areas 1, 2 & 3 on the plan attached to the statutory declaration of Mr Cockburn, dated 28<sup>th</sup> March 2007. I also allow the appeal on this ground in respect of the blocks of polytunnels

occupying area 5 and the western half of area 4 within Windmill Field, as denoted on the same statutory declaration plan. The approximate positions of the lawful polytunnels are shown by solid shading on Plan 2, attached to this decision.

125. I grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended, for the polytunnels in Packhouse Field and the polytunnels in Windmill Field on the eastern half of area 4, as shown on the plan attached to the statutory declaration of Mr Cockburn dated 28<sup>th</sup> March 2007 (the approximate positions of which are shown by dashed areas on Plan 2 attached to this decision), subject to the following conditions:

1. The polytunnels hereby permitted shall be removed not later than two years from the date of this permission.

2. Each of the blocks of polytunnels hereby permitted shall be covered by polythene for not more than six months in any year.

3. The polytunnels hereby permitted shall be removed within two months of the date of failure to meet any one of the requirements set out in (i) to (iv) below: -

- i) within 3 months of the date of this decision a scheme for tree and hedge planting for Windmill Field and Packhouse Field shall have been submitted for the written approval of the local planning authority and the scheme shall include a timetable for its implementation.
- ii) within 11 months of the date of this decision the scheme shall have been approved by the local planning authority or, if the local planning authority refuse to approve the scheme or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.
- iii) if an appeal is made in pursuance of (ii) above, that appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State.
- iv) the approved scheme shall have been carried out and completed in accordance with the approved timetable.

126. I dismiss the appeal and uphold the enforcement notice as corrected and varied insofar as it relates to the polytunnels in Front Meadow, Wetlands, the block below Wetlands, Lower Fishpool and Poulstone Court (the approximate positions of which are shown by cross hatching on Plan 2 annexed to this decision), and I refuse planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

127. I direct that the enforcement notice be varied by the substitution of "not later than 31<sup>st</sup> December 2008" for "60 days" as the period for compliance in paragraph 6.

*Clive Whitehouse*

INSPECTOR

## APPEARANCES

### FOR THE APPELLANT:

David Elvin QC                      Instructed by Burges Salmon, Solicitors, Bristol.  
Assisted by Gwion Lewis  
He called                              Anthony Aspbury, BA MRTPI, Director, Anthony Aspbury Associates Ltd, Planning Consultants  
Neil Cockburn, Pennoxstone Court Farm, appellant  
Laurence Olins, Chairman, British Summer Fruits Ltd.  
Nicholas Marston, Chief Executive, Berry Gardens Ltd.  
James Standen, BSc MSc, Principal Business Consultant, ADAS UK Ltd.  
Kevin Light, BA(Hons) DipLA MLI FRSA, Director DLA Landscape Architects.

### FOR THE LOCAL PLANNING AUTHORITY:

Richard Kimblin                      Of Counsel, instructed by the Director of Legal Services, Herefordshire Council.  
He called                              Cathryne Coleman, BSc, Senior Planning Officer  
Juliet Wheatley BA MLA, Team Leader, Landscape and Biodiversity  
Christopher Partrick BA(Hons), Dip.Heritage Management, MIHBC, Senior Building Conservation Officer.  
Peter Yates BSc, MCD, MRTPI, Development Control Manager. Mr Yates took over and added to the proof of evidence of Mr Willmont, the south area team leader, who became ill during the inquiry.

### INTERESTED PERSONS Supporting the Appellant

Anthony Jones                      Packhouse manager employed and resident at Pennoxstone Court, Kings Cagle.  
Jack Everitt                          Member of Kings Cagle Parish Council, Court Farm, Kings Cagle HR1 4TY  
Harry Bees                            Member of Kings Cagle Parish Council, 1 Edwinsmere Cottage, Kings Cagle HR1 4UQ.  
Anthony Snell                        Chairman, National Farmer's Union Horticultural Board, West Midlands. Pencourt Farm, Harewood End, Hereford, HR2 8JY  
Amy Bowes                            Twickel Barn, Hoarwithy, HR2 6QP  
Richard Brandram-Jones            Neighbouring Farmer, The Old Farmhouse, Kings Cagle HR1 4TZ  
Joanne Spencer-Pytel                63B Stanhope Street, Hereford, HR4 0HA.  
David Price                            Country Land and Business Association, Old Forge, New Mills Hill, Goodrich, Ross on Wye, HR9 6JD  
Gary Woodman                        Hereford and Worcester Chamber of Commerce, Crossway House, Holmer Road, Hereford, HR4 9SS  
John Berry                            Soft fruit grower, Haygrove Ltd. Redbank, Ledbury, HR8 2LY  
Jeremy Price                          Farmer, Oakchurch Farm, Staunton on Wye, HR4 7NE

Mr K Pedersen                      Wyeside Cottage, Hoarwithy, HR2 6QS  
Mr Drummond                      Soft fruit farmer, E. C. Drummond & Son, Ross on Wye

INTERESTED PERSONS    Supporting the Local Planning Authority

Mervyn Morgan                      Campaign to Protect Rural England, Westfield House, Bulls Hill, Walford, Ross on Wye, HR9 5RH  
Virginia Morgan                      Ditto, Campaign to Protect Rural England, Herefordshire Branch  
Christopher Wooldridge              Herefordshire Wye Valley AONB Society, Ford House Farm, Ford House Road, Newent, GL18 1LQ  
Edward Kelly                      Organiser of The Campaign for Polyunnel Control, Wye Hill, Hoarwithy, HR2 6QS (asked questions).  
Sylvia Kelly                      Ditto, Parish Footpath Officer (asked questions)  
Andrew Blake                      Officer for the Wye Valley AONB, Hadnock Road, Monmouth, NP25 3NG  
Barry Gates                      Hoarwithy resident  
Janet Round                      Member of Ledbury Walking Club, 1 Southend Mews, The Southend, Ledbury, HR82HD  
Heather Hurley                      Ross Civic Society, Upper Orchard, Hoarwithy, HR2 6QR  
Peter Simkins                      Friends of Hoarwithy, Hoarwithy House, Hoarwithy, HR2 6QG  
Daphne Wyatt                      Member of the Committee for Small Historic Towns and Villages, Withy Cottage, Hoarwithy HR2 6QS  
Jenny Ellerton                      Wickton Action Group, Wickton Court, Stoke Prior, Leominster, HR6 0LN  
David Kennedy                      Rivermead, Hoarwithy, HR2 6QS  
Sally Lawrance                      Owner of a guesthouse in Hoarwithy, Aspen House, Hoarwithy, HR2 6QP  
Richard Farmer                      Former conference organiser at Poulstone Court  
Peter Huyton                      Rockland House, Hoarwithy, HR2 6QR  
Ronald Pennell                      2 Lower Bibblets, Hoarwithy HR2 6QF  
Simon Lennane                      Local GP, Castle Cottage, Kings Caple, HR1 4UB  
Suzanne Farr                      Local self-catering cottage owner, Garraway House, How Caple, HR1 4SS  
John Carter                      17 Caple Avenue, Kings Caple HR1 4UL.

INTERESTED PERSONS    Supporting neither party

A K Eames                      Chapter Clerk, Hereford Cathedral, 5 College Cloisters, Hereford, HR1 2NG  
Charles Brandram-Jones              Hill Cottage, Kings Caple, HR1 4VA

DOCUMENTS (submitted at the inquiry)

- Doc.1. Statement of Common Ground, dated 7<sup>th</sup> November 2007.
- Doc.2. Wye Valley AONB Management Plan.
- Doc.3. Herefordshire Council Landscape Character Assessment.
- Doc.4. Kings Caple Parish Plan, 2006.

Additional documents submitted by the appellant.

- Doc.5A Rebuttal proof of Neil Cockburn
- Doc.5B Rebuttal proof of Anthony Aspbury
- Doc.6 Photomontages showing effects of proposed planting from certain viewpoints, submitted by Mr Light.
- Doc.7 Letter from Jack Everitt agreeing to planting on his land next to the Church.
- Doc.8 Copies of correspondence between the Council and the appellant's advisors.
- Doc.9 Layout of Tuesley Farm, Surrey for comparative purposes.
- Doc.10 Waverley BC Committee report dated November 2007 recommending the grant of planning permission for polytunnels at Tuesley Farm, Surrey.
- Doc.11 Note of meeting between Mr Blake, AONB Officer and appellant's advisors.
- Doc.12 Pesticide Usage Survey Report. Soft Fruit in Great Britain 2001.
- Doc.13 Additional letters of support.

Additional Documents submitted by the Council

- Doc.14 Supplementary proof of evidence of Peter Yates, Development Control Manager.
- Doc.15 Delegated enforcement report on Pennoxstone Farm, January 2007.
- Doc.17 Suggested draft planning conditions.
- Doc.18 Herefordshire Planning Enforcement Policy.
- Doc.19 Information on Haygrove Ltd., soft fruit grower near Ledbury and E. C. Drummond & Son, Ross on Wye.

Additional Documents submitted by Third Parties.

- Doc.20 Statement by David Price, Country Land and Business Association.
- Doc.21 Statement by Andrew Blake, Wye Valley AONB Officer.
- Doc.22 Statement by Mervyn Morgan, CPRE
- Doc.23 Statement by Virginia Morgan CPRE
- Doc.24 Letter and press cutting submitted by Virginia Morgan.
- Doc.25 Affidavit of Edward Kelly with exhibits including photographs, letters and plans.
- Doc.26 Letter from Mr Kelly (Campaign for Polytunnel Control) enclosing photograph No.3648.
- Doc.27 Letter from Mr Kelly enclosing original digital record on CD of submitted photographs.
- Doc.28 Affidavit and photographic enclosure of Brian Edward Thomas.
- Doc.29 Additional bundle of letters of objection handed in at the inquiry.
- Doc.30 Statement by Christopher Wooldridge on behalf of the Hereford Wye Valley AONB Society.
- Doc.31 Statement by Heather Hurley.
- Doc.32 Statement and attached photographs by Sally Lawrence.
- Doc.33 Copy of Fresh Fruit and Vegetables Aid Scheme issued by the Rural Payments Agency, submitted by Mr Kelly.

ADDITIONAL PLANS SUBMITTED AT THE INQUIRY

- P1 Corrected enforcement notice plan submitted by the Council, excluding land at Lower Ruxton Farm.



P2 Plan giving individual field names.

P3 Plan No. DLA1154/20 rev A showing agreed polytunnel positions at the time of the issue of the notice, and polytunnels erected post-issue.

P4 Plan prepared by DLA Ltd showing local roads and footpaths without viewpoints of the polytunnels and those with either glimpsed or continuous views.