

25 July 2007

Dear Chief Planning Officer

POLYTUNNELS

There has been concern amongst several local planning authorities about the planning status of polytunnels following a High Court judgement in December 2006. The purpose of this letter is to clarify the Government's understanding of the situation, to provide advice on enforcement and to set out planning policy on agriculture.

R oao Hall Hunter Partnership v First Secretary of State and others (the Tuesley Farm case in Surrey) was a High Court challenge to the decision of a planning inspector who had determined that, as a matter of fact and degree, the provision of the polytunnels in question comprised a building operation and hence constituted development for the purposes of the Town and Country Planning Act 1990. Mr Justice Sullivan found that the inspector had adopted the correct approach in deciding the issue and therefore dismissed the claim.

In the light of this, there are two key questions to consider in looking at future cases. The first question is whether the provision of the particular polytunnels amounts to development. Secondly, if so, whether it is permitted development, and therefore does not require a planning application and the express approval of the planning authority.

On the first question, the answer will depend on the type and scale of the polytunnels proposed. The judgement simply reflected what has been taken to be the case previously, that is, whether building operations have occurred will be decided on the basis of all material considerations including the size of the polytunnels, their degree of permanence and physical attachment to the ground. In the view of the Department, the Tuesley Farm case does not mean that all future polytunnels will necessarily need planning permission.

The second question is what permitted development rights exist for polytunnels. The range of permitted development is set out in the Town and Country Planning (General Permitted Development) Order 1995 (GPDO). Part 6 of the GPDO relates to agricultural buildings and operations. This Part allows, for agricultural units of five or more hectares, the erection of a "building" which is reasonably necessary for the purposes of agriculture within that unit. The definition of a building includes a structure or erection, which a polytunnel would be if considered to be development. However, there are a number of restrictions on the size and placing of the building. For larger-scale polytunnel operations the most relevant of these will be the restriction governing the area such a building can cover which is 465m². Although more than one "building" can be erected at any one time they must be at least 90metres from another building.

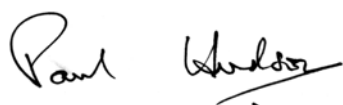
If a local planning authority is considering whether to take enforcement action in relation to polytunnels provided without planning permission, the key factor to take into account is the harm which has been, or may be, caused to local amenity. If there are no planning objections to the unauthorised polytunnel, there may be no need for a local planning authority to take enforcement action merely to regularise the situation. The better course of action is to invite a retrospective planning application.

In granting planning permission, local planning authorities may of course impose conditions as part of the approval process and any such conditions will then be enforceable in the normal way. If, on the other hand, they consider that unauthorised development is unacceptable on planning grounds, they have the power to take enforcement action. It is for the local planning authority to decide in each case which is the most appropriate course of action, taking account of local circumstances.

The Government recognises the important and varied roles of agriculture. *Planning Policy Statement 7: Sustainable Development in Rural Areas (PPS7)* asks planning authorities, when drawing up their planning policies, to recognise the important and varied role of agriculture and to support development proposals that promote sustainable, diverse and adaptable agricultural sectors. It is important that local planning authorities take this into account, along with all other material planning considerations, when determining planning applications for agricultural development proposals.

In summary, the Department considers that the Tuesley Farm case does not alter the relevant considerations for a local planning authority when dealing with polytunnel developments. The judge in the Tuesley Farm decision considered the facts of that case and did not seek to extend the implications of the judgement more widely. A local planning authority should therefore continue to assess the planning status of a particular polytunnel proposal on a case by case basis.

Yours sincerely

A handwritten signature in black ink that reads "Paul Hudson". The signature is written in a cursive style with a horizontal line underneath the name.

Paul Hudson
Chief Planner