

From: Amanda Scholes on behalf of Planning.Responses
Sent: 30 January 2020 11:50
To: Planning Scanning
Subject: FW: Newlands Nursery Applications refs P/108/19/CLP, P/109/19/CLP & P/110/19/CLP
Attachments: 9030 letter of objection v1.0docx.pdf

Amanda Scholes | Receptionist, Department, Arun District Council | Location: Ground Floor, Arun Civic Centre, Maltravers Road, Littlehampton, BN17 5LF



Visit Arun's web site at **Error! Hyperlink reference not valid.**



Save the environment - think before you print.

From: Simon Davis
Sent: 30 January 2020 11:22
To: Planning.Responses
Subject: FW: Newlands Nursery Applications refs P/108/19/CLP, P/109/19/CLP & P/110/19/CLP

Kind Regards

Simon J Davis MRTPI | Principal Planning Officer, Planning Department, Directorate of Place, Arun District Council | Location: Planning, First Floor, Arun Civic Centre, Maltravers Road, Littlehampton, BN17 5LF

Please note that I typically work from home on Thursdays when I am unreachable on my work phone



Visit Arun's web site at www.arun.gov.uk



Save the environment - think before you print.

From: jill scrivener
Sent: 30 January 2020 09:15

To: Simon Davis <[REDACTED]>
Subject: Newlands Nursery Applications

Dear Simon

Applications: P/108/19/CLP, P/109/19/CLP and P/110/19/CLP

Please find attached our letter of objection in relation to the above applications. Should you have any questions or queries please do not hesitate to contact me.

I would be extremely grateful if you could please confirm receipt of this email.

Regards

Jill

Jill Scrivener
Director





www.bournerural.co.uk

Bourne Rural Planning Consultancy Limited
Head Office: Leyswood, Wildhern, Andover, SP11 0JE
Sussex Office: Hurstpierpoint, West Sussex

Disclaimer: This e-mail is intended solely for the person to whom it is addressed and may contain confidential or privileged information. If you have received it in error please notify us immediately and destroy this e-mail and any attachments. In addition, you must not disclose, copy, distribute or take any action in reliance on this e-mail or any attachments. Since the internet is not secure Bourne Rural is not responsible for corruption in transmission or unauthorised use by third parties. To minimise the risks of software viruses we recommend you carry out your own virus checks on receipt of e-mail. Any views or opinions of the author of this e-mail are solely those of the author and do not necessarily represent those of Bourne Rural.



Bourne Rural

PLANNING CONSULTANCY LTD

Our Ref: 9030
Your Ref: P/108/19/CLP, P/109/19/CLP P/110/19/CLP

30 January 2020

For the attention of Mr S Davis

Arun District Council
Via email

Dear Mr Davis

Applications: P/108/19/CLP, P/109/19/CLP and P/110/19/CLP

Site: Newlands Nursery, Pagham Road, Chichester

Proposals: Lawful development certificate for the proposed use – use of the caravan site for spring seasonal workers;

Lawful development certificate for the proposed use – use of the caravan site for summer seasonal workers; and

Lawful development certificate for the proposed use – use of the caravan site for autumn seasonal workers

Bourne Rural have been instructed to act as agents to a number of residents who reside in the Pagham Road area.

These comments have been prepared by Jill Scrivener of Bourne Rural. Bourne Rural specialise in agricultural and land use planning issues. Mrs Scrivener has significant experience appraising a wide range of rural enterprises in the context of planning applications for new agricultural, horticultural, equestrian and other occupational dwellings and buildings. She has provided training for local authorities in relation to various permitted development rights under Part 4 and Part 6 of the GPDO. She was also the author of the Guide To Farmers in the South Downs National Park, prepared on behalf of the SDNPA and which explores the various permitted development opportunities available to farmers. She regularly works as an expert witness in relation to all agricultural planning matters and for many years was the rural adviser to various local authorities in Buckinghamshire, Hampshire, West Sussex, Oxfordshire. She is an expert in this field.

This letter has been prepared in response to the three lawful development certificates which are sought for the proposed use as a caravan site to accommodate seasonal workers over three seasons (spring, summer and autumn) at Newlands Nursery. The proposals indicate the following requirement for accommodation:

Spring (February and March)	20 caravans	100 workers
Summer (April to July)	31 caravans	161 workers
Autumn (August to November)	25 caravans	130 workers

This objection letter seeks to demonstrate that the proposals advanced are not permitted development.

Comments

1. The applications are made under Class A to Part 5 of Schedule 2 of The Town and Country Planning (General Permitted Development (England) Order 2015, as amended.

2. Class A deals with the use of land as caravan site and states:

"Permitted development

A. The use of land, other than a building, as a caravan site in the circumstances referred to in paragraph A.2.

Condition

A.1 Development is permitted by Class A subject to the condition that the use is discontinued when the circumstances specified in paragraph A.2 cease to exist, and all caravans on the site are removed as soon as reasonably practicable.

Interpretation of Class A

A.2 The circumstances mentioned in Class A are those specified in paragraphs 2 to 10 of Schedule 1 to the 1960 Act (cases where a caravan site licence is not required), but in relation to those mentioned in paragraph 10 do not include use for winter quarters."

3. Of relevance here, paragraph 7 of Schedule 1 to the Caravan Sites and Control of Development Act 1960 states:

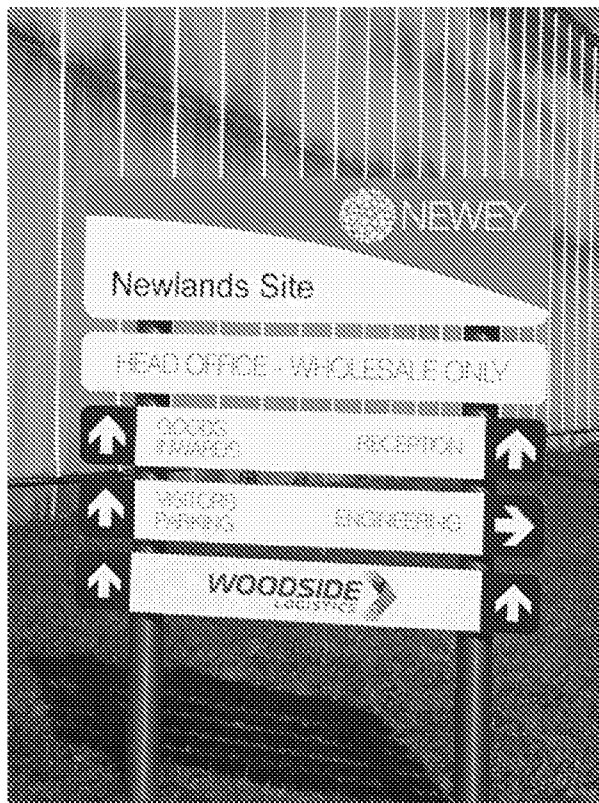
"Subject to the provisions of paragraph 13 of this Schedule, a site licence shall not be required for the use as a caravan site of agricultural land for the accommodation during a particular season of a person or persons employed in farming operations on land in the same occupation."

4. There are four key criteria which are the core considerations within these applications.
5. By Class A to Part 5 of Schedule 2, permission is granted for, *"..the use of the land....as a caravan site in the circumstances referred to in paragraph A.2"*. Such permission is subject to the condition set out in paragraph A.1, namely, *"the use shall be*

discontinued when the circumstances specified in paragraph A.2 cease to exist and all caravans on the site shall be removed as soon as reasonably practical”.

6. The circumstances mentioned in Class A, as set out in paragraph A.2 are those specified in paragraphs 2-10 of Schedule 1 to the Caravan Sites and Control of Development Act 1960 (as amended). The Act prohibits the use of the land as a caravan site without a site licence, but no such licence is required for use in the circumstances set out in the First Schedule to the Act. Paragraph 7 of the Act identifies that a site licence would not be required for the “....use as a caravan site of agricultural land for the accommodation during a particular season of a person or persons employed in farming operations on land in the same occupation”.
7. Class A of Part 5 of Schedule 2 of the GPDO and Paragraph 7 of the First Schedule to the Caravan Sites and Control of Development Act 1960, set out four criteria that all need to be met to attract the permission granted by the GPDO. **All four criteria must be met for the caravan site to be permitted development.**
8. This matter has been fully explored in the Secretary of State’s decision in relation to Brierley Court Farm¹ (attached – paragraphs 18 to 24 of relevance here) and firmly establishes the rationale as detailed above.
9. In consideration of the current applications against these four tests, the following comments are made:
Test 1 - Use as a caravan site of agricultural land and for the accommodation...of a person or persons employed in farming operations
10. It is accepted that the caravans would be used to provide accommodation for agricultural/horticultural workers.
11. However, from the evidence available, it is not clear that the land has been in an agricultural use and, therefore, constitutes agricultural land as required under Part 5.
12. Whilst there is no doubt that there is an agricultural activity in operation at the Newlands Nursery site, there have also been non-agricultural activities taking place. The Nursery site has also been used as the base for Woodside Logistics (a cargo and freight company), as evidenced in the photograph below (taken from public land):

¹ APPEAL REFS: APP/W1850/A/04/1158013 and 14, APP21850C/04/1159320,21 and 22 Brierley Court Farm, Brierley, Leominster, Herefordshire HR6 0NU



13. From the evidence available, it is considered that the applicant has failed to demonstrate that the land is in a solely agricultural use and the first requirement has, therefore, not been met.

Test 2 - The use shall be discontinued....and all caravans on the site shall be removed as soon as reasonably practical when the circumstances specified in paragraph A.2 of Part 5 cease to exist

14. These current proposals seek to retain the caravans on the site for three seasons continuously, rather than for three separate seasons when all caravans would be

removed between each season. This approach fails to meet the requirements of Part 5.

15. Furthermore, it is evident that additional infrastructure is to be provided as part of the application, including the siting of a sewerage treatment plant to the eastern corner of the main glasshouse and, it would appear, the creation of an access track incorporating a turning circle. The caravans will need to be connected to mains services and, although not specifically detailed within the applications, this will undoubtedly generate additional works. No planning permission is sought for these additional works.
16. In consideration of this specific point, the conclusions reached by the Inspector in the Brierley Court Farm case are referred to here, where it was concluded that (paragraph 9.10 refers):

“The implementation of the works would, as a matter of fact and degree, effect a material change in the character of the land such that it would amount to a change of use of the site from agriculture to a caravan site; in other words the agricultural use would be replaced by the permanent infrastructure of a caravan site. In these circumstances whether or not the caravans were to be taken off the site for part of the year would be immaterial, the use would not revert to agriculture.”

17. This stance was supported by the Secretary of State.
18. It is considered that, with the creation of an access track, turning circle, installation of sewerage treatment plant and the additional works required for connection to mains services, there are sufficient similarities here for the Secretary of State’s conclusions to be of relevance here.
19. Furthermore, it is noted that no detailed description of the proposed development has been provided at Section 8 of the application form. It is, therefore, not possible to fully understand the nature of development proposed.

Test 3 - Use of agricultural land as a caravan site for accommodation during a particular season

20. The arguments advanced by the applicant (Section 3 of the Planning, Design and Access Statement refer) suggest that the seasonal use of the site for the stationing of the caravans for workers meets the requirements of Part 5 of the GPDO.
21. However, this is not consistent with the conclusions reached by the Inspector and the Secretary of State in relation to the Brierley Court Farm case. This matter is fully explored at paragraph 21 of the Secretary of State’s ruling which clearly identifies that:

“a season of 7 to 8 months would, as a matter of fact and degree, be too broad a period within a year to comprise a “particular season” as it is not sufficiently temporary to compare with seasonal activities such as hop-gathering or potato-picking.”

22. Whilst it is accepted that the current proposals seek to retain the caravans over three seasons, there is no proposal to remove the caravans at the end of each season and, therefore, the period of time that the caravans would be sited would be too broad a period to comprise a “particular season”.

23. Furthermore, and importantly, if the caravans are not removed between seasons, then the use of the land at the start of the following season is not agricultural. Consequently, the proposals would fail to meet the requirements of paragraph 7 of Schedule 1 to the Caravan Sites and Control of Development Act 1960 and GPDO Part 5 rights would, therefore, not apply.
24. Notwithstanding the conclusions reached above, it is also considered that the implementation of the works required for the site to function as a caravan site for workers, would result in a material change of use of the land from agriculture to a caravan site. The land would not then benefit from ongoing rights under Part 5 as it would not be land in agricultural use.
25. For completeness, it is also noted that the applicant has failed to demonstrate that any consideration has been given to where the caravans would be stored during the winter months, when not in use.

Test 4 - Person or persons employed in farming operations on land in the same occupation

26. Although these applications appear to relate to providing 'seasonal' accommodation for the Newland Nursery site workers only, the applicant seeks to make the argument that *"there is no clear requirement for occupancies to be contiguous with an accommodation site or related to the ownership of the land"*.
27. They go on to say that: *"Therefore, a farm worker carrying out the same farming activity on multiple sites for the same business may be considered as working with the 'same occupation' and therefore complying with circumstances described in the 1960 Act"*.
28. It is noted that this matter was fully explored in the Brierley Court Farm case, where paragraph 22 states that:

"The Secretary of State considers that land other than at Brierley Court Farm is not 'in the same occupation' as the site, notwithstanding the fact that it is owned by the appellant. The Secretary of State considers that there comes a point when, as a matter of fact and degree, it could be said that someone was employed not simply at farm X, but rather was employed at farms X, Y and Z and that, in those circumstances, it could not be said that they were employed in land in the same occupation."
29. There is no opportunity for workers from other sites to be housed in any 'seasonal' accommodation at Newlands Nursery site.

Other Matters for Consideration

30. Notwithstanding the conclusions reached above, the following comments and observations are also made.
31. The applicants are identified on the application form as CRE8 (understood to be CRE8 Property Limited), yet there is no information to identify their interest in the site, as detailed on the extract from the application form below:

5. Lawful Development Certificate - Interest in Land
Please state the applicant's interest in the land?

Owner: ☐ Yes ☒ No Lessee: ☐ Yes ☒ No Occupier: ☐ Yes ☒ No

If Yes to Lessee or Occupier please give details of the owner and state whether they have been informed in writing of this application:

Name	Address	Have they been informed in writing of the application?	
		Yes	No
		☐	☐

If No to all the above, please give name and addresses of anyone you know who has an interest in the land:

Name	Address	Nature of interest in the land	Have they been informed of the application?		If they have not been informed of the application please explain why not
			Yes	No	
ROUNDSTONE NURSERY	NEWLANDS NURSERY PYHAM ROAD CHICHESTER PO20 1LL	OCCUPIER	☒	☐	
PETBLES MANAGEMENT SERVICES LIMITED	WHITEHALL FARM HEDGERMISTON STRATFORD CV22 8DW	OWNER	☒	☐	
			☐	☐	
			☐	☐	

32. As a property company, their interest is clearly unrelated to any agricultural activity and it is not clear how the current proposals relate to CRE8. It would, therefore, appear reasonable to request additional information in relation to this matter.
33. It is also noted that Newlands Nursery is the base for a significant number of businesses, as identified on the listing below² (search undertaken for the nursery postcode):

Company	Status	Telephone	Net Assets	Turnover
Young Plants Limited Highgate Road, Lymington, Hampshire, PO20 1LL	Active	-	£440,03k	-
Sea Place Nurseries Limited Newlands Nursery, Pyham Road, Chichester, West Sussex, PO20 1LL	Active	-	£506,57k	-
Neasey Limited Newlands Nursery, Pyham Road, Chichester, Hampshire, PO20 1LL	Active	-	£3,48k	£20,76m
Acornwood Ornamentals Limited Highgate Road, Lymington, Hampshire, PO20 1LL	Active	-	£295,24k	-
New Forest Plants Ltd Newlands Nursery, Pyham Road, Chichester, Hampshire, PO20 1LL	Active	-	£1,12m	-
Eagle Plants Limited Highgate Road, Lymington, Hampshire, PO20 1LL	Active	-	£154,85k	-
Petbles Management Services Limited Highgate Road, Lymington, Hampshire, PO20 1LL	Active	-	£7,99k	£44,06m
Evergreen Plants Limited Highgate Road, Lymington, Hampshire, PO20 1LL	Active	-	£242,92k	-
Transforce LLP Highgate Road, Lymington, Hampshire, PO20 1LL	Active	-	£76,64k	-
Yellow Holdings Ltd Highgate Road, Lymington, Hampshire, PO20 1LL	Active	-	-	-

34. A number of the companies are not identified as being of an agricultural nature, albeit many have the same directors.

² Information as detailed on Endole website at <https://suite.endole.co.uk/explorer/postcode/po20-1ll>

35. Insufficient information has been submitted to confirm that the core use in operation at Newlands Nursery is agricultural.
36. Finally, it is noted that there is a total lack of clarity in relation to the charts on labour requirements incorporated within the three Planning, Design and Access Statements submitted in support of the applications. This has precluded any opportunity to assess the anticipated staffing levels.
37. Clarification on this matter is clearly required in order to enable an appropriate assessment of the number of caravans proposed.

Taking all of the above into account, it is concluded that the current proposals fail to meet the requirements of Part 5 of the GPDO. Consequently, they do not constitute permitted development and require full planning permission.

I trust the above comments aid in your considerations but should you have any questions or queries please do not hesitate to contact me.

Yours sincerely

A solid black rectangular box used to redact the signature of Jill Scrivener.

Jill Scrivener



OT100-048-274

Case copied by COMPASS under click-use licence

11 April 2007

Mr D Hallmark
Hallmark Solicitors
4 & 5 Sansome Place
Worcester
Worcestershire
WR1 1UQ

Our Ref: APP/W1850/A/04/1158013
APP/W1850/A/04/1158014
APP/W1850/C/04/1159320
APP/W1850/C/04/1159321
APP/W1850/C/04/1159322

Your Ref: DCNC2004/0902/F
DCNC2004/0321/F
EN2004/0026/ZZ
EN2004/0027/ZZ
EN2004/0028/ZZ

Dear Sir,

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTIONS 78 AND 174
BRIERLEY COURT FARM, BRIERLEY, LEOMINSTER, HEREFORDSHIRE HR6
0NU**

**PLANNING APPLICATION REF: DCNC2004/0902/F
PLANNING APPLICATION REF: DCNC2004/0321/F
ENFORCEMENT NOTICE REF: EN2004/0026/ZZ
ENFORCEMENT NOTICE REF: EN2004/0027/ZZ
ENFORCEMENT NOTICE REF: EN2004/0028/ZZ**

1. I am directed by the Secretary of State to refer to your client's appeals as follows:

Appeal A: made under section 78 of the Town and Country Planning Act 1990 against the decision of Herefordshire Council to refuse planning permission for the construction of a new sewage treatment plant and pumping station;

Appeal B: made under section 78 of the Town and Country Planning Act 1990 against the decision of Herefordshire Council to refuse planning permission for the construction of an amenity building, toilet buildings and site works for 300 unit caravan standing (change of use) for farm worker's accommodation;

Notice 1: made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against an Enforcement Notice issued by Herefordshire Council requiring the appellant to: (i) totally remove the single storey building, hardstanding and all associated connections (including in each case all associated works and equipment) without causing additional harm to the agricultural quality or archaeological potential of the land; (ii) remove from the land all building materials and rubble resulting from compliance with requirement (i); and (iii) restore the land to its condition before



the breach took place by levelling the ground, re-seeding it with grass and such other work as is necessary to return its agricultural land quality to at least that which it formerly had;

Notice 2: made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against an Enforcement Notice issued by Herefordshire Council requiring the appellant to: (i) totally remove the sewage treatment plant, the pumping station, the hardstanding and all associated connections (including in each case all associated works and equipment) without causing additional harm to the agricultural quality or archaeological potential of the land; (ii) remove from the land all building materials and rubble resulting from compliance with requirement (i); and (iii) restore the land to its condition before the breach took place by levelling the ground, re-seeding it with grass and such other work as is necessary to return its agricultural land quality to at least that which it formerly had;

Notice 3: made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against an Enforcement Notice issued by Herefordshire Council requiring the appellant to (i) stop using any part of the land for the siting of caravans for residential use; (ii) remove from the land all caravans and all associated site works; and (iii) restore the land to its condition before the breach took place by levelling the ground, re-seeding it with grass and such other work as is necessary to return its agricultural land quality to at least that which it formerly had;

on land at Brierley Court Farm, Brierley, near Leominster, Herefordshire HR6 0NU.

2. A public local inquiry into these appeals was held by the Inspector Bridget M Campbell BA (Hons) MRTPI, from 12 to 15 July 2005. The appeal against Notice 3 was withdrawn at the start of the Inquiry. The Inspector recommended that the other appeals be dismissed and the enforcement notices be upheld, subject to correction. The Secretary of State's decision was set out in a decision letter dated 3 November 2005. For the reasons set out in that letter the Secretary of State accepted the Inspector's recommendation, dismissed the appeals, and upheld the enforcement notices subject to correction. Following your client's application to the Court under sections 288 and 289 of the Town and Country Planning Act 1990, an Order was made by the Administrative Court of the Queens Bench Division of the High Court on 23 March 2006 that the Secretary of State's decision of 3 November 2005 be quashed; and that the appeals be remitted to the Secretary of State for redetermination.
3. Following the Order of The High Court dated 23 March 2006, the Secretary of State wrote to parties on 5 April 2006 in accordance with Rule 19 of the Town and Country Planning (Inquiries Procedure) (England) Rules 2000. In that letter, representations were invited on matters that required further consideration and parties were offered the opportunity to request that the public inquiry be reopened.
4. On 17 May 2006, the Secretary of State again wrote to parties, circulating representations to his letter of 5 April, inviting comments or any new evidence, and confirming that the Secretary of State was minded to conclude that there were no

substantive issues that required the Inquiry to be reopened, and that the case may be decided by written representations. On 22 September 2006, parties were again written to, stating that the Secretary of State was still of the view that there were no substantive matters that necessitated the reopening of the Inquiry and requesting that parties submit written representations by 13 October 2006. On 27 November 2006, all representations received were circulated to parties and they were invited to comment on them. The Secretary of State wrote to the parties again on 23rd January and 1st February 2007 following the Court's judgment in the case of Hall Hunter Partnership Ltd v Secretary of State for Communities and Local Government, Waverley Borough Council and Tuesley Farm Campaign/ Residents Group (High Court, Friday 15th December 2006). A list of all representations received is set out at Annex A.

5. The Secretary of State has proceeded to re-determine the appeals, taking into account, as material considerations, the Order of the Court, the Inspector's report and the written submissions provided by the parties.

Inspector's recommendation

6. The Inspector, whose conclusions are reproduced in Annex B to this letter, recommended that the appeals be dismissed and planning permission refused. For the reasons given below, the Secretary of State agrees with the Inspector's conclusions, except where stated, and with her recommendation. A copy of the Inspector's report is enclosed. All references to paragraph numbers, unless otherwise stated, are to that Inspector's report (IR).

Procedural matters

7. The Secretary of State has noted that the appeal against enforcement notice 3 was withdrawn at the outset of the Inquiry, and she agrees with the Inspector that, as a consequence, that notice has come into effect (IR1.4). The Secretary of State notes the appellant's case that express planning permission is not required for the caravans, and considers this issue further in paragraphs 18 - 24 of this letter.
8. The Secretary of State notes that the Council sought to replace the plans attached to enforcement notices 1 and 3, and that the appellant has no objections to these changes (IR1.5). As the Secretary of State no longer has any jurisdiction for notice 3, for the reasons mentioned in paragraph 2 above, she has considered enforcement notice 1 on this basis.
9. The Secretary of State has had regard to discussions about the wording to notices 1 and 2 regarding harm to archaeological remains (IR1.6). She agrees with the Inspector's conclusions at IR1.6 that such a correction would not prejudice the appellant's position. She has therefore considered notices 1 and 2 on the basis of these amendments.
10. The Secretary of State has also had regard to the Council's withdrawal of reason for refusal 3 on the decision notice relating to Appeal B. She has therefore considered Appeal B and notice 1 on the basis of the withdrawal of reason for refusal 3 (IR1.7).

11. The Secretary of State accepts the Inspector's conclusions that if Appeal B is allowed, the sewage treatment plant and pumping station that are the subject of Appeal A would be required and that if Appeal B is dismissed, the sewage treatment plant and pumping station would not be required and would therefore be contrary to planning policy (IR9.21).

Policy considerations

12. In deciding the application, the Secretary of State has had regard to section 38(6) of the Planning and Compulsory Purchase Act 2004 which requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise.
13. In this instance, the development plan comprises the Regional Spatial Strategy for the West Midlands (RSS11), published in June 2004, the Hereford and Worcester County Structure Plan 1993, adopted in January 2001, and the Leominster District Local Plan, adopted in October 1999.
14. There is also an emerging Herefordshire Unitary Development Plan (UDP) of 2004, which has reached an advanced stage in its process towards adoption. The emerging UDP has continued its progress towards adoption since the Inspector described its status (IR3.1) and the proposed modifications have now been consulted on. The Secretary of State therefore considers that significant weight should be attributed to the policies in it.
15. The Secretary of State considers that those development plan policies of relevance in this case are set out in section 5 of the Statement of Common Ground between the Appellant and the Council (IR3.1 and Document 9). The Secretary of State has also taken account of those policies set out in the Appendices to document AVRA1, which are of relevance to the applications.
16. Since the close of the inquiry, Planning Policy Statement 3: Housing (PPS3) has been published on 29 November 2006 and this came into force on 1st April 2007. The Secretary of State acknowledges that local planning authorities are not required to have regard to PPS3 as a material consideration when making decisions on planning applications until 1 April 2007, although there may be circumstances when PPS3 should be taken into account as such prior to this date. The Secretary of State has taken PPS3 into account. However she considers that, in this particular case, PPS3 does not affect her conclusions on the main issue as set out in paragraphs 43 - 57 of this letter. For these reasons, she also concludes that its publication does not constitute a material change in circumstances in the matters relevant to this appeal to an extent that would affect her decision, or require her to refer back to the parties for further representations, prior to reaching her decision.

Preliminary Matters

17. The Secretary of State considers that, as enforcement notice 3 has been withdrawn, she has no jurisdiction to under s177(1)(c) of the Town & Country Planning Act 1990 to consider an appeal against an enforcement notice (IR9.2). She also agrees with the Inspector, for the reasons set out in IR9.3-9.4, that

issuing an enforcement notice does not remove permitted development rights ("PDRs") under Schedule 2 to the Town and Country (General Permitted Development) Order 1995 ("GPDO"), and that there are other statutory mechanisms in place to remove PDRs (IR9.4).

Part 5 of Schedule 2 to the Town and Country Planning (General Permitted Development Order) 1995 (GPDO)

18. The Secretary of State considers that it is material to take into account the extent to which the permitted development rights, set out in Part 5 of Schedule 2 to the GPDO, may apply to the proposed caravan site use. The Secretary of State notes that by Class A of Part 5 of Schedule 2, permission is granted for, "... the use of land... as a caravan site in the circumstances referred to in paragraph A.2". Such permission is subject to the condition set out in paragraph A.1, namely, "the use shall be discontinued when the circumstances specified in paragraph A.2 cease to exist and all caravans on the site shall be removed as soon as reasonably practical". The circumstances mentioned in Class A, as set out in paragraph A.2 are those specified in paragraphs 2-10 of Schedule 1 to the Caravan Sites and Control of Development Act 1960. The Caravan Sites and Control of Development Act 1960 (as amended) prohibits the use of land as a caravan site without a site licence, but no such licence is required for use in the circumstances set out in the First Schedule to this Act. By paragraph 7 of the First Schedule, a site licence would not be required for the "...use as a caravan site of agricultural land for the accommodation during a particular season of a person or persons employed in farming operations on land in the same occupation". The Secretary of State considers that, taken together, Class A of Part 5 of Schedule 2 to the GPDO and paragraph 7 of the First Schedule to the Caravan Sites and Control of Development Act 1960 set out four criteria that all need to be met to attract the permission granted by the GPDO. The Secretary of State concludes that, in order for the caravan site to be permitted development, the appellant has to meet all four criteria.
19. The Secretary of State is content that the caravans, for which the proposed development is supporting infrastructure, are intended for "use as a caravan site of agricultural land for the accommodation...of a person or persons employed in farming operations" and, as such, that use would meet the first criterion.
20. Second, it is necessary to show that "...the use shall be discontinued...and all caravans on the site shall be removed as soon as reasonably practical" when the circumstances specified in paragraph A.2 of Part 5 of Schedule 2 to the GPDO cease to exist. The Secretary of State is content that the caravans have been removed when the site is not being used for accommodation. However, since caravans cannot by definition be occupied on the site once they have been removed from it, the condition envisages that there may be circumstances where mere removal of the caravans may not be sufficient to bring the use of the land as a caravan site to an end. Whether removal of the caravans will of itself be sufficient to bring a use as a caravan site to an end will be very much a matter of fact and degree in each case. The Secretary of State has considered the nature of the development left behind when the caravans are removed. She agrees with the Inspector that even without the caravans the character would still be that of a caravan site wholly at odds with its farmland setting (IR9.24). Given the permanent

nature of the proposed development in this case, which includes hardstandings, access roads and permanent buildings, the Secretary of State is of the opinion that, notwithstanding the removal of the caravans from time to time, the use of the land as a caravan site would not, as a matter of fact and degree, be discontinued. The Secretary of State has considered the appellant's claim that the land could be used for agricultural purposes, such as for the grazing of animals, when the caravans have been removed (appellant's submission dated 15 March 2007). She considers that any such use for agricultural purposes would be very limited and would do nothing to alter the character of the land from that of a caravan site. She therefore considers that the scheme would fail the second criterion.

21. Third, it is necessary to show that the use as a caravan site on this agricultural land is "...for accommodation...during a particular season." The Secretary of State notes that the appellants claim that the soft fruit season, with polytunnels, runs from May to November and the Council claim that it runs from 1 April to 30 November. Notwithstanding the slight discrepancy in the claimed dates, the Secretary of State considers that a season of 7 to 8 months would, as a matter of fact and degree, be too broad a period within a year to comprise a "particular season" as it is not sufficiently temporary to compare with seasonal activities such as hop-gathering or potato-picking. Hence the scheme would fail the third criterion. The Secretary of State notes the appellant's submission that the season represents a number of overlapping seasons for different varieties of strawberry (appellant's submission dated 15 March 2007). However, the occupation of the caravans does not vary according to these seasons and the Secretary of State has therefore considered the soft fruit season as a whole.
22. With regard to the fourth criterion that needs to be met to attract the permission granted by the GPDO, the Secretary of State notes that the workers accommodated at Brierley Court Farm would work at the appellant's other farms. The appellant claims that, notwithstanding the deployment of employees to other farms in their ownership, all are employed on "land in the same occupation". The appellant, in its representation dated 15 March 2007, asserted that workers spend around 80% of their time working on land in the vicinity of the site and 20% at other locations. The Secretary of State considers that land other than at Brierley Court Farm is not 'in the same occupation' as the site, notwithstanding the fact that it is owned by the appellant. The Secretary of State considers that there comes a point when, as a matter of fact and degree, it could be said that someone was employed not simply at farm X, but rather was employed at farms X, Y and Z, and that, in those circumstances, it could not be said that they were employed on land in the same occupation. The Secretary of State considers 20% to be a significant proportion of an employee's working hours and considers this sufficient to conclude, for the reasons given above, that the workers are not employed on land in the same occupation. She therefore considers that the scheme does not meet the fourth criterion.
23. The Secretary of State therefore concludes that the appellant cannot claim permitted development rights for the proposed caravan site use at Brierley Court Farm, as, far from meeting each of the four criteria, the scheme has only been shown to meet one criterion, clearly fails two and cannot be said to have met the fourth.

24. The Secretary of State agrees with the Inspector (IR 9.18) that the question of permitted development rights is of relevance in considering the 'fall back' position. This is considered further below in the planning merits assessment (paras 60 - 62).

The nature and extent of the planning application

25. The Secretary of State notes the difference of opinion between the appellant and the Council over whether Appeal B is for a change of use of land, as well as for operational development (IR9.6-IR9.7).
26. The Secretary of State agrees with the Inspector that the application that is the subject of appeal B was originally intended to include an application for the use of the site as a caravan park. She also agrees that, in principle, the Appellant may seek, and she may grant, a planning permission for a lesser development than that applied for. The Secretary of State considers that the Inspector has correctly set out in IR9.8 the factors that need to be considered in relation to such a request.
27. However, the Secretary of State agrees with the Inspector (IR 9.10) that any permission granted for the operational development would carry with it the authority to use the land as a caravan site. The Secretary of State therefore concludes that the operational development cannot be considered in isolation from the change of use of the site.

Relevance of the polytunnels

28. The Secretary of State agrees with the Inspector that there are procedures under Sections 191 and Section 192 of the 1990 Act to formally determine whether development of land is lawful (IR9.11), and therefore considers that it is not appropriate to consider whether planning permission is required for the polytunnels in these appeals.
29. However, the Secretary of State also agrees with the Inspector's conclusion that, since the need for accommodation is dependent on a farming enterprise which necessarily involves their use (IR9.12), and because they extend the cropping season, the issue of whether the appellant is likely to be able to continue to use the polytunnels is a material consideration to be taken into account in the assessment of need for the workers' accommodation. For the reasons in IR9.13, and entirely without prejudice to the lawfulness of the current polytunnel use, the Secretary of State agrees with the Inspector's conclusion that, on the balance of probability, the appellant's polytunnel farming operation is likely to continue in the foreseeable future.
30. The Secretary of State also considers that, when assessing the impact of the caravan site on the character and appearance of the local area, the likely continued existence of the polytunnels is a material consideration. She deals with this below (paras 36 - 42)

Planning Considerations

31. The main issues in this case are considered below.

Whether the proposal accords with the development plan

32. The Secretary of State agrees with the Inspector that there is a wide range of relevant policies in the RSS and other plans which make up the development plan in this particular case, whose general thrust is to foster economic growth and wellbeing by providing for necessary development, but in a manner which avoids or minimises damage to interests of acknowledged importance (IR9.20).
33. For the reasons given in paragraphs 36 - 42 below, the Secretary of State agrees with the Inspector (IR9.28) that the proposed development would be contrary to adopted and emerging plan policies concerned with protecting the landscape of the area.
34. For the reasons set out in paragraphs 43 - 59 below, the Secretary of State considers that the proposed development would be contrary to adopted and emerging plan policies on sustainable development, on residential development in rural areas and on development on agricultural land. Whilst the Secretary of State considers that the proposal derives some support from those policies which encourage economic development (para 43 below), she considers that this benefit is outweighed by the conflict with other development plan policies (para 57 below).
35. For the reasons above, the Secretary of State considers that, notwithstanding the support from the economic policies, the proposal is not in accordance with the development plan.

Character of the countryside

36. PPS7 makes clear that new building development in the open countryside away from existing developments, or outside areas allocated for development in development plans, should be strictly controlled. It advises that planning authorities should continue to ensure that the quality and character of the wider countryside is protected and, where possible, enhanced. All development in rural areas should be well designed and inclusive, in keeping and scale with its location, and sensitive to the character of the countryside and local distinctiveness.
37. The Secretary of State has considered the argument put forward by the appellant that the proposed development should be seen in the context of it being surrounded by extensive areas of polytunnels and that the overriding character of the farmland surrounding the caravan site is not informal but is defined by the formalised layout of polytunnels (Para 3.28, *Further Representations to the Secretary of State*, 17 November 2006). The Secretary of State sees some force in this argument. She considers it likely that the appellant's polytunnel farming operation is likely to continue in the foreseeable future. However, she notes the Inspector's comments at IR9.25 regarding the removal of the polythene from the tunnels and the removal of the polytunnels themselves and considers that, despite the changing appearance of the polytunnels, certain elements of visual impact of the caravan site would remain regardless of whether the polytunnels remain in their present location or not.
38. The Secretary of State has also considered the impact of the proposal on the wider countryside and agrees with the Inspector that, given the natural landscape

character of the area in which the appeal site is located, the isolated position, size and regimented layout of the access roads, hardstandings and caravans would (and, insofar as part of the development has already been carried out, does) appear entirely out of character with the agricultural rural scene (IR9.22-9.23) and extinguish the contribution made by the field in the character of the countryside (IR9.23). She also agrees with the Inspector's reasoning and conclusion in IR9.24 that, even without the caravans, the character would still be that of a caravan site wholly at odds with its farmland setting, albeit that it would be vacant. The Secretary of State further agrees with the Inspector (IR9.27) that, from some viewpoints, the formal layout of the site is readily appreciated and it would be even with the caravans removed as the line of the access roads and rows of hardstanding would still be seen along with the permanent buildings.

39. The Secretary of State has, like the Inspector, taken into account the visual impact of the proposals from public vantage points. The Secretary of State acknowledges that public close up views of the site are limited, given the amount of screening (IR9.25). She also considers that the site is also not of a prominent feature in long-distance views across the Arrow Valley, given its low lying nature and the topography of the site (IR9.26). However, from within the farm itself, including from footpath 87, the Secretary of State agrees with the Inspector that the caravan site would present an inappropriate intrusion in the rural scene following the removal of the polythene or of the polytunnels themselves (IR9.25).
40. The Secretary of State agrees with the Inspector (IR9.28) that the proposed development does not affect the landscape quality of the ALV or the setting of Ivington Camp to a significant degree. She agrees with the Inspector that, for the reasons set out in IR9.26-9.28, the middle distance views of the site would present a striking contrast between the caravan site and surrounding farmland, and damage the fine and extensive views available across the Arrow Valley (IR9.27). She therefore agrees with the Inspector that the proposal is contrary to development plan and emerging plan policies concerned with protecting the landscape of the area (IR9.28), and in particular RSS policy QE6, Structure Plan policies CTC9 and A3, Local Plan policies A1 and A9, and draft UDP policies E13 and LA2.
41. The Secretary of State agrees with the Inspector that the proposed development would inevitably introduce a level of activity and noise from the inhabitants of the site, including their comings and goings to and from the site, and that this would intrude on the peaceful nature of the location with a resulting harm to the tranquillity of the countryside (IR9.29). She also agrees that the lighting at night would have an urbanising effect and intrude after dark to an extent which would harm the night time character of the rural area (IR9.29). On this basis, she considers that the proposal conflicts with Structure Plan policy CTC9, local plan policies A1 and A13 and draft UDP policies DR13, DR14 and E13.
42. The Secretary of State therefore concludes, like the Inspector, that the development would result in serious damage to the character and appearance of the rural area (IR9.30), and is therefore in conflict with existing and emerging development plan policies. She also considers that the proposal conflicts with paragraphs 1(iv), 1(vi) and 15 of PPS7 that contain policies that seek to protect the quality and character of the countryside.

Need

43. The Secretary of State agrees with the Inspector that the appellant's operation is a thriving and expanding business which is labour intensive at certain times of the year (IR9.35). The Secretary of State agrees with the Inspector that the proposal relies on a very large temporary workforce (IR9.31), and that this workforce needs to be accommodated within a reasonable distance of the farmed areas (IR9.35). She therefore considers that this proposal draws some support from paragraphs 5 and 27 of PPS7 and the economic policies in the development plan, but particularly from RSS policy PA15, local plan policy A35 and emerging UDP policies E11 and E13.
44. The Secretary of State agrees with the Inspector that, since the proposed accommodation is to serve any of the appellant's sites and not just Brierley Court Farm (IR9.32), while it might be preferable for workers to be on-site, it is not tenable to argue that the accommodation must be at Brierley Court. The Secretary of State also agrees with the Inspector (IR9.33) that the objective of minimising effects on neighbouring residents in Brierley does not warrant a substantial development on an isolated greenfield site which also results in the loss of a sizeable area of grade 1 and 2 agricultural land.
45. The Secretary of State notes that considerable money has been expended by the appellant in providing infrastructure (IR9.34). However, she agrees with the Inspector (IR9.34) that expenditure does not make the site any more acceptable from a locational point of view and that money might equally have been spent on a more suitably located site.
46. For the reasons set out in IR9.35, the Secretary of State agrees with the Inspector that the financial and functionality tests set out in Annex A to PPS7 do not have particular relevance to this case. In doing so the Secretary of State has also taken into account the fact that Annex A specifically relates to isolated new dwellings.
47. The Secretary of State agrees with the Inspector that there is a need for temporary accommodation within a reasonable distance of the strawberry growing sites, and especially during mid-May to mid-July (IR9.36). She notes the claim by the Council that the scale of accommodation proposed is only required during the peak period (IR5.18).
48. The Secretary of State has considered carefully the evidence submitted to the Inquiry and the subsequent written representations. She considers that the appellants have investigated alternative sites and accommodation solutions. However, for the reasons given below, she does not find this evidence persuasive.
49. The Secretary of State notes that the appellant refers to the concept of "reasonable distance" (*Further representations to the Secretary of State*, paragraph 4.41), and asserts that "large parts of the area are poorly accessible, especially for the buses and coaches that are the means of transporting workers between growing sites" and that it is "preferable for workers accommodation to be located close to the main highway network in order to cause the minimum potential disruption to the rural road network". The Secretary of State does not consider that the appellant

has adequately explained what is meant by a "reasonable distance", for example, in terms of travelling time to the site. Although the Secretary of State accepts that the workforce needs to be accommodated within a reasonable distance of the farmed areas, she has been presented with insufficient evidence to enable her to determine what constitutes a reasonable distance in these circumstances, or that the search area selected by the appellant covers all possible sites within that reasonable distance.

50. As the appellant has failed to explain to her satisfaction what constitutes an acceptable amount of travel time and how that figure has been reached, the Secretary of State gives little weight to the dismissal of sites in Hereford on the basis of excessive travel time and distance to the Brierley and Wickton growing sites.
51. The Secretary of State notes that the appellant has provided an overview of the need for the subject development by way of background and then provided a review of alternative sites "potentially able to meet that need, on the basis that the location of the caravan site is predetermined" (*Further representations to the Secretary of State*, paragraph 4.2). She further notes that, "consideration is given to other opportunities available for providing a self-contained accommodation complex". The Secretary of State considers this basis to be artificially restricted. In order for need for the proposed development to have been demonstrated properly, she would have expected all possible modes of accommodating the workforce, including dispersal across a number of sites and accommodation that is not self-contained, within a clearly defined, explained and justified "reasonable distance" of their place or places of work to have been examined. She is concerned that by narrowing consideration in this way, the appellant may have made it impossible for her to establish for herself on the basis of the evidence provided that a self-contained accommodation complex in this location would be a suitable solution. However, notwithstanding this concern, she has considered carefully the evidence presented.
52. The Secretary of State notes that the appellant states, "Whilst the S&A Group has on a number of occasions purchased houses close to the growing sites for use by workers...this means of accommodation could conceivably only ever account for a small proportion of the workforce, currently in excess of 3,500 at peak season, and is not viable" (*Further representations to the Secretary of State*, paragraph 4.43). Whilst accepting that it would not be viable to purchase separate houses to accommodate a peak of 3,500 staff, the Secretary of State considers that the appellant has not shown how the need for accommodation may vary as the growing season progresses – the appellant refers to peak need, but not need at other times.
53. The Secretary of State notes the appellant's claim that "disseminating workers across a large number of properties would not be commercially viable, nor would it be practical from an operational point of view, having regard to the fundamental requirement to have workers available at short notice, and it would also lead to unsustainable travel patterns" (*Further representations to the Secretary of State*, paragraph 4.45). In the absence of evidence, the Secretary of State gives little weight to the assertion that it would not be commercially viable to disseminate workers across a large number of properties. If the appellant had given this careful

consideration she would have expected to be presented with a detailed analysis of how many properties in which locations could be used before the venture became unviable. She would also have expected to be presented with evidence of how many workers are required in which locations at how much notice in order to enable her to verify the appellant's claims regarding the need for large numbers at short notice.

54. At paragraph 4.50 of the *Further representations to the Secretary of State*, the appellant states, "Only those sites that are currently in the ownership of the group, or those that could be, can be realistically be considered to be available for accommodating workers in large numbers." In the absence of evidence regarding viability, the Secretary of State does not accept the appellant's assertion that workers need to be accommodated in large groups. She therefore does not accept the basic premise on which the appellant considered sites in its ownership. Nor does she accept, for the reasons given previously, the dismissal of any site on the basis of travel time.
55. Notwithstanding her reservations about the adequacy of the search in terms of its scope and the selected search area, the Secretary of State has given careful consideration to the evidence that resulted from that search. The appellant claims that the availability of larger residential/hostel facilities in Hereford and Leominster is limited (*Further representations to the Secretary of State*, paragraph 4.44), but provided only limited evidence that this is the case, choosing to rely on its "experience that the opportunities for housing workers in existing properties in the Hereford or Leominster built up areas, or elsewhere, are very limited and could only ever satisfy the needs of a very small proportion of the total workforce." The Secretary of State would have expected to see quantitative evidence to substantiate this claim. The Secretary of State also considers that the appellant has failed to provide any details of what is available in terms of brownfield land (apart from Leominster Enterprise Park) and that it is therefore not possible to assess whether brownfield sites, either taken individually or in combination, have been properly rejected as potential alternatives sites.
56. The Secretary of State considers that the appellant approached the analysis of alternative sites on the basis of artificial restriction, defined important terms inadequately and failed to provide adequate information to enable her to verify for herself the assertions made by the appellant. Having considered the further representations of the appellant, for the reasons given above, the Secretary of State gives very little weight to the claims of the appellant that there are no alternative sites. The Secretary of State has noted the appellant's evidence that there is no more suitable location for the sewage treatment plant and amenity building, but, as she does not accept the basic premise on which the evidence was provided, gives it little weight.
57. For the reasons set out above, the Secretary of State considers that the proposal conflicts with policy H20 of the Structure Plan, local plan policies A.2 and A.43 and policies H7 and H8 of the emerging UDP, and that this conflict outweighs the support gained from those policies set out in paragraph 43 above in favour of the development.

Sustainability

58. PPS1 and PPS7 state that sustainable development is the core principle underpinning planning. It is also one of the key principles of PPS7 that accessibility should be a key consideration in all development decisions in rural areas, and that most development which is likely to generate large number of trips should be located in or next to towns or other service centres that are accessible by non-car modes of travel.
59. The Secretary of State notes that the site is not served by any local facilities and that it is not situated within reasonable distance of any public transport service. The Secretary of State notes the applicant's claim that the site promotes sustainable transport objectives by reducing the need to travel, consistent with policies in the development plan (IR4.26). The Secretary of State agrees with the Inspector (IR9.33) that the suggestion that the location of the accommodation on the farm reduces the need to travel is not borne out by the fact that the workers are there to serve any of the appellant's farms in the area. For these reasons, the Secretary of State considers the appeal site, on its own merits, to be in an unsustainable location for a use involving a substantial residential element and considers that it is contrary to paragraph 3 of PPS7 on the location of development.

The fallback position

60. The Secretary of State has had regard to the appellant's argument that the polytunnels and caravans would remain (IR4.8 & IR9.37) if the appeals were dismissed. For the reasons given at paragraph 28 of this letter, the Secretary of State does not consider it appropriate to consider whether planning permission is required for the polytunnels in these appeals. However, the appellant's fall back argument in relation to the caravans relies on permitted development rights within Class A of Part 5 of Schedule 2 to the GPDO.
61. For the reasons given at paragraphs 18 - 24 of this letter, the Secretary of State does not accept the appellant's starting position for the consideration of alternative sites that, "The use of land as a caravan site for accommodating seasonal agricultural workers is a lawful use and it will remain for the foreseeable future" (*Further representations to the Secretary of State*, paragraph 4.3). The Secretary of State considers that, for the reasons given at paras 18 - 24 of this letter, the appellant cannot claim permitted development rights for the proposed caravan site use at Brierley Court Farm. Even if the hardstandings and infrastructure of the caravan site were removed, for the reasons given at paras 18 to 24 which relate to the other criteria that need to be met to attract the permission granted by the GPDO, the Secretary of State does not consider that the use of the site would benefit from permitted development rights. Further, the Secretary of State does not consider the appellant's apparent willingness to continue to house its workforce on a caravan site without suitable hardstanding and infrastructure, without which there is some doubt that the S&A Group could guarantee the well-being and welfare of its workforce, to be sufficient reason to justify the assumption that the caravan site would remain without the hardstanding and infrastructure.

62. For the reasons given in paragraphs 18 - 24 above, the Secretary of State has concluded that the scheme does not qualify for permitted development rights. Like the Inspector (IR9.37), she considers that a permitted site under Part 5 would require return to agricultural use out of the particular season and thus harm would be limited to certain times of the year. The Secretary of State agrees with the Inspector that a permanent caravan site is not justified on the grounds of what might be done as permitted development. However, she further considers for the reasons given above that the use of the site would not benefit from permitted development rights even without the hardstandings and the infrastructure. She therefore does not consider the fallback position to have any weight in her consideration of these appeals.

Request for the extension of the compliance period

63. The Secretary of State has considered the appellant's request, in their *Further representations to the Secretary of State*, that the compliance period be extended to the end of the 2007 season. She notes that the period for compliance with the enforcement notices was not queried by the appellant at the time of the inquiry and appears to have been considered reasonable. She accepts that, had the enforcement notice decision been made at that time, the impact on the appellant would have been different, as it would have come into effect in February 2006. The Secretary of State notes that if the decision regarding the enforcement notices is issued on 11 April 2007, as proposed, the date by which the appellant would have to comply would be 13 July 2007. She also notes (IR9.31) that the size of the temporary workforce is at its peak between mid-May and mid-July.

64. The Secretary of State notes that the appellant claims that extending the compliance period to the end of the 2007 season, "will guarantee the welfare and wellbeing of workers employed during that season, and will also provide the S&A Group with a reasonable period of time in which to plan for and implement alternative arrangements for the 2008 season." The Secretary of State considers that it is the responsibility of the employer to take appropriate steps to guarantee the welfare and wellbeing of workers employed. Also, as previously noted, the appellant accepted at the time of the inquiry that 93 days was a reasonable period for compliance. However, notwithstanding the fact that the appellant has known for some time that it was possible that the decision would go against it, the Secretary of State considers that it would be appropriate for her to vary the time given for compliance with the enforcement notices, increasing the period for compliance by 151 days, to 274 days, in order to protect the appellant's workforce from any failure on the part of their employer to make adequate contingency arrangements.

Other matters

65. The Secretary of State agrees with the Inspector that, for the reasons set out in IR9.39, no weight should be given to the suggestion that the amenity building could be reused as a community facility (IR9.39). The Secretary of State also considers that its isolated position and the lack of accessibility renders the site inappropriate for such a form of development (IR5.28).

66. The Secretary of State has considered whether there is a case for temporary planning permission. For the reasons set out in IR9.40, the Secretary of State considers that it would not be appropriate in this case.

Overall Conclusions

67. The Secretary of State considers that there is a need for temporary accommodation to house the temporary workforce within a reasonable distance of the strawberry growing sites. She considers that the key issues are what form this should take and where it should be. The amenity building, caravan site and associated development (Appeal B) harm the character and appearance of the countryside, the landscape quality of the area, and are built on some 8.6 hectares of the best and most versatile agricultural land. It has not been demonstrated that the need for workers' accommodation has to be met by a single large development, such as that proposed, on this site.
68. The Secretary of State therefore considers that Appeal B conflicts with development plan policies concerned with protecting the countryside and quality agricultural land from unnecessary development and with achieving sustainable patterns of development, and she is satisfied that there are no material considerations of such weight as to indicate that she should determine the appeal other than in accordance with the development plan.
69. In the light of the Secretary of State's conclusions in relation to Appeal B, there is no need for the sewage treatment plant and pumping station that are the subject of Appeal A. Accordingly, the sewage treatment plant and pumping station conflict with the development plan. There are no material considerations of such weight as to indicate that the Secretary of State should determine Appeal A other than in accordance with the development plan.

Formal Decision

70. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's conclusion and dismisses Appeals A and B and refuses planning permission for the amenity building, caravan site and associated hardworks, as well as the sewage treatment plant.
71. The Secretary of State also upholds enforcement notice 1, subject to the following corrections:
- (a) *the substitution of the plan annexed to this letter for the plan attached to the enforcement notice;*
 - (a) *the deletion from paragraph 2 of the words "edged red on the attached plan numbered 2 (OS reference number 48725625)" and the substitution of the words "edged black on the attached plan"; and*
 - (b) *the deletion of requirement (i) of paragraph 5 of the notice and the substitution of the words "Totally remove the single storey building, hardstanding and all associated connections (including in each case all associated works and equipment) without causing additional harm to the agricultural quality of, and without causing harm to any archaeological remains on, the land to which this notice relates."*

- (c) *the substitution of 274 days for 93 days as the time for compliance at paragraph 6 of the enforcement notice*

72. The Secretary of State also upholds enforcement notice 2, subject to the following corrections:

- (a) *The deletion of requirement (i) of paragraph 5 of the notice and the substitution of the words "Totally remove the sewage treatment plant, the pumping station, the hardstanding and all associated connections (including in each case all associated works and equipment) without causing additional harm to the agricultural quality of, and without causing harm to any archaeological remains on, the land to which this notice relates."*
- (b) *The substitution of 274 days for 93 days as the time for compliance at paragraph 6 of the enforcement notice*

Right to challenge the decision

73. This letter does not convey any approval or consent which may be required under any enactment, bye-law, order or regulation other than that required under section 57 of the Town and Country Planning Act 1990.

74. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged by making an application to the High Court.

75. A copy of this letter has been sent to Herefordshire Council, those who appeared at the inquiry and to others who requested a copy.

Yours faithfully,

Anna C Macintyre
Authorised by the Secretary of State
to sign in that behalf

ANNEX A

List of Representations received from parties

In response to the Secretary of State's letter of 5 April 2006:

<u>Name</u>	<u>Date of letter</u>
AVRA	6 April 2006
AVRA	21 April 2006
Herefordshire Council	26 April 2006
Hallmark Solicitors	28 April 2006
Hallmark Solicitors	2 May 2006
Hallmark Solicitors	10 May 2006

In response to the Secretary of State's letter of 17 May 2006:

<u>Name</u>	<u>Date of letter</u>
AVRA	24 May 2006
Hallmark Solicitors	25 May 2006
Hallmark Solicitors	2 June 2006
TGWU	5 June 2006
Hallmark Solicitors	23 June 2006

In response to the Secretary of State's letter 22 September 2006

<u>Name</u>	<u>Date of letter</u>
Hallmark Solicitors	6 October 2006
AVRA	13 October 2006
AVRA	19 October 2006
Hallmark Solicitors	17 November 2006

In response to the Secretary of State's letter of 27 November 2006

<u>Name</u>	<u>Date of letter</u>
Herefordshire Council	4 December 2006
Leominster Civic Trust	7 December 2006
DPDS	12 December 2006
Aubrey Green	12 December 2006
AVRA	12 December 2006

In response to the Secretary of State's letter of 1 February 2007

<u>Name</u>	<u>Date of Letter</u>
DPDS	8 March 2007
Hallmark Solicitors	15 March 2007

In response to the Secretary of State's letter of 19 March 2007

<u>Name</u>	<u>Date of Letter</u>
DPDS	30 March 2007
Hallmark Solicitors	3 April 2007



Report to the First Secretary of State

The Planning Inspectorate
Temple Quay House
2 The Square
Temple Quay
Bristol BS1 6PN

by Bridget M Campbell BA(Hons) MRTPI

an Inspector appointed by the First Secretary of State

Date: 26 August 2005

/

TOWN AND COUNTRY PLANNING ACT 1990 as amended by the PLANNING AND COMPENSATION ACT 1991

**APPEALS made under sections 78 and 174 by S & A Property Limited against refusals of
planning permission and against enforcement notices issued by Herefordshire Council**

Inquiry held on 12, 13, 14 and 15 July 2005

Brierley Court Farm, Brierley, Leominster, Herefordshire HR6 0NU

**File Refs: APP/W1850/C/04/1159320, 1159321 & 1159322 and APP/W1850/A/04/1158013 &
1158014**

Notice 1: APP/W1850/C/04/1159320

Brierley Court Farm, Brierley, Leominster, Herefordshire HR6 0NU

- 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 S and A Property Limited against an enforcement notice issued by Herefordshire Council.
- The Council's reference is EN2004/0026/ZZ.
- The notice was issued on 8 July 2004.
- The breach of planning control as alleged in the notice is without planning permission, the erection of a single storey building, hardstanding and water, electricity and sewage connections.
- The requirements of the notice are to:
 - (i) totally remove the single storey building, hardstanding and all associated connections (including in each case all associated works and equipment) without causing additional harm to the agricultural quality or archaeological potential of the land;
 - (ii) remove from the land all building materials and rubble resulting from compliance with requirement (i); and
 - (iii) restore the land to its condition before the breach took place by levelling the ground, re-seeding it with grass and such other work as is necessary to return its agricultural land quality to at least that which it formerly had.
- The period for compliance with the requirements is 93 days.
- The appeal is proceeding on the grounds set out in section 174(2) (a) of the 1990 Act.

Summary of Recommendation: The appeal be dismissed, and the enforcement notice upheld with correction.

Notice 2: APP/W1850/C/04/1159321

Brierley Court Farm, Brierley, Leominster, Herefordshire HR6 0NU

- 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 S and A Property Limited against an enforcement notice issued by Herefordshire Council.
- The Council's reference is EN2004/0028/ZZ.
- The notice was issued on 8 July 2004.
- The breach of planning control as alleged in the notice is without planning permission, the installation of a sewage treatment plant, pumping station and hardstanding on the land together with associated connections from caravans in an adjoining field.
- The requirements of the notice are to:
 - (i) totally remove the sewage treatment plant, the pumping station, the hardstanding and all associated connections (including in each case all associated works and equipment) without causing additional harm to the agricultural quality or archaeological potential of the land;
 - (ii) remove from the land all building materials and rubble resulting from compliance with requirement (i); and
 - (iii) restore the land to its condition before the breach took place by levelling the ground, re-seeding it with grass and such other work as is necessary to return its agricultural land quality to at least that which it formerly had.
- The period for compliance with the requirements is 93 days.
- The appeal is proceeding on the grounds set out in section 174(2) (a) of the 1990 Act.

Summary of Recommendation: The appeal be dismissed, and the enforcement notice upheld with correction.

Notice 3: APP/W1850/C/04/1159322

Brierley Court Farm, Brierley, Leominster, Herefordshire HR6 0NU

- 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 S and A Property Limited against an enforcement notice issued by Herefordshire Council.
- The Council's reference is EN2004/0027/ZZ.
- The notice was issued on 8 July 2004.
- The breach of planning control as alleged in the notice is without planning permission, change of use of the land from use for agriculture to use as a residential caravan site for the permanent stationing of caravans, together with associated works comprising the construction, erection and building of roadways, pathways, fuel tanks, water, electricity and sewage connections and storage and amenity buildings.
- The requirements of the notice are to:
 - (i) stop using any part of the land for the siting of caravans for residential use;
 - (ii) remove from the land all caravans and all associated site works; and
 - (iii) restore the land to its condition before the breach took place by levelling the ground, re-seeding it with grass and such other work as is necessary to return its agricultural land quality to at least that which it formerly had.
- The period for compliance with the requirements is 93 days.
- The appeal was initially proceeding on the grounds set out in section 174(2) (a) of the 1990 Act.

Summary of Recommendation: The appeal was withdrawn during the inquiry.

Appeal A: APP/W1850/A/04/1158013

Brierley Court Farm, Brierley, Leominster, Herefordshire HR6 0NU

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by S and A Property Limited against the decision of Herefordshire Council.
- The application Ref DCNC2004/0902/F, dated 24 March 2004, was refused by notice dated 17 May 2004.
- The development proposed is the construction of a new sewage treatment plant and pumping station.

Summary of Recommendation: The appeal be dismissed.

Appeal B: APP/W1850/A/04/1158014

Brierley Court Farm, Brierley, Leominster, Herefordshire HR6 0NU

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by S and A Property Limited against the decision of Herefordshire Council.
- The application Ref DCNC2004/0321/F, dated 6 February 2004, was refused by notice dated 12 May 2004.
- The development proposed is the construction of an amenity building, toilet buildings and site works for 300 unit caravan standing (change of use) for farm workers accommodation.

Summary of Recommendation: The appeal be dismissed.

1. PRELIMINARY MATTERS

- 1.1 A pre-inquiry meeting was held on 16 May 2005.¹ I made an accompanied inspection of the appeal site, the surroundings and of the Appellant's operation on other sites in the area on 11 July 2005. At the inquiry an application for costs was made for S & A Property Limited against the Council. This application is the subject of a separate Report.
- 1.2 Planning appeals A and B were lodged in August 2004. By letter dated 9 September 2004, the First Secretary of State directed that he should determine the appeals himself because they relate to proposals giving rise to significant public controversy. The enforcement appeals relating to notices 1, 2 and 3 followed, and by letter dated 22 October 2004 the First Secretary of State directed that he should also determine these appeals himself because they are most efficiently and effectively decided with the planning appeals.
- 1.3 In the light of representations received, the First Secretary of State considered whether an Environmental Impact Assessment (EIA) was required. By letter dated 29 December 2004 he directed that the development for which permission is sought is not EIA development.²
- 1.4 At the outset of the inquiry, the appeal against enforcement notice 3 was withdrawn and it was confirmed for the Appellant that there is no objection to that notice being upheld. As a consequence that notice has come into effect. The Appellant's case is that express planning permission is not sought for a change of use, but rather for operational development to support the use as a caravan site specifically permitted by Part 5 of Schedule 2 to the Town and Country Planning (General Permitted Development) Order 1995 (GPD0).
- 1.5 By letter dated 24 November 2004 the Council enclosed substitute plans with a request that they replace the plans attached to enforcement notices 1 and 3.³ The replacement plans do not alter the overall area affected by the notices but more accurately define the areas covered by the building and hardstanding (notice 1) and the caravan site (notice 3). No objection was raised for the Appellant in relation to the substitution of these plans and no prejudice would arise from making such a correction. However, only the plan for notice 1 can be replaced. This is because the appeal against notice 3 has been withdrawn; that notice has come into effect; and the First Secretary of State has no further jurisdiction in that matter.
- 1.6 Discussion took place at the inquiry about whether the first requirement in notices 1 and 2 to remove works "without causing additional harm to the agricultural quality or archaeological potential of the land" was sufficiently precise. It was agreed that in relation to agricultural quality there was sufficient clarity as the land has been classified as grade 1 and 2, but that with regard to archaeological potential, this might be better worded as "without causing harm to any archaeological remains". No prejudice would arise from such a correction which would improve the clarity of the requirement.
- 1.7 Following the receipt of "Consent to Discharge" issued on 13 May 2005 by the Environment Agency Wales, the Council confirmed that reason for refusal 3 on the

¹ Document 1

² Letter dated 29 December 2004 on file APP/W1850/A/04/1158013

³ Document 4

decision notice relating to appeal B had been satisfactorily addressed.⁴ That reason for refusal and the similarly worded reason included in the reasons for issuing notice 1 are, therefore, withdrawn.

- 1.8 The proof of evidence and appendices prepared by David Whalley and Associates for the Arrow Valley Residents' Association (AVRA) are to be taken as a written statement as Mr Whalley did not appear at the inquiry. The exception is section 8 of the proof and the maps at appendix 2, which were, other than in the reference to biological damage, adopted by the witness appearing for AVRA.

2. BACKGROUND

The appeal sites, the surroundings and the developments

- 2.1 Brierley Court Farm, comprising some 160 hectares in total, adjoins the western side of the hamlet of Brierley. It spans both sides of Brierley Lane, an unclassified narrow country lane which leads in a westerly direction towards Park Gate and Ivington. The northern extent of the farm is generally defined by the Little Arrow River, although a finger of land extends as far north as the River Arrow. To the south, the land rises and the farm has a relatively straight boundary where it meets the steeper wooded slope of Brierley Wood. The high land of Brierley Wood, with the scheduled ancient monument Ivington Camp Hill Fort at the western end, marks the southern extent of the Arrow River valley.⁵ Further agricultural land in separate ownership adjoins the western boundary of the farm.⁶
- 2.2 Prior to the Appellant's acquisition in July 2003, the property was a hop farm. The hop barns, farm house and other farm buildings were located on the western side of Brierley.⁷ The main processing buildings were largely destroyed by fire in 2002. The farm is now used to grow strawberries under polytunnels. The field pattern and established tall hedgerows which served as windbreaks to protect the hop bines remain. The northern part of the farm comprises a poplar plantation due to be felled in 2018.
- 2.3 Brierley has no local facilities or services. The lane running through the hamlet links to the B4361 some 0.7km to the east and this in turn links to the market town of Leominster some 3km to the north east of the appeal sites. The nearest public transport comprises a bus service linking Hereford and Leominster which passes along the B4261. A new private road has been constructed by the Appellant from the B4361 north of Brierley, through the farm, to connect to Brierley Lane opposite the appeal sites, thus providing direct access to the main road network without having to pass through Brierley itself.
- 2.4 The appeal sites are all contained within two fields immediately adjoining the southern side of Brierley Lane and at the western end of the farm about 400-800m to the west of Brierley. The fields consist of grades 1 and 2 agricultural land.⁸ In the north eastern corner of the eastern field the sewage treatment plant (enforcement notice 2 and appeal A) has been constructed. The works are largely contained within raised grassed earthworks and include associated hardstanding, access track and security fence.⁹ A temporary mobile

⁴ Doc 3 of Document 1

⁵ Document AVRA1, appendix DM3/7

⁶ Document SA1 – appendix JDW1

⁷ Document SA2, appendix 7 and document LA1, fig.3

⁸ Document LA3, appendix 2

⁹ Document 10 – CD15

sewage collection tank was stationed on the plant at the time of my visit, but is no longer required now that a "Consent to Discharge" has been issued. The associated pumping station is located in the corner of the adjoining field to the west. There is an access into the eastern field beside the sewage treatment works directly opposite the end of the newly constructed road on the other side of Brierley Lane.

2.5 A track leads from the access across the top of the eastern field to a gated and patrolled entrance to the western field. The whole of the western field comprises the application site for appeal B and the land the subject of enforcement notices 1 and 3 is contained within this field¹⁰. The field provides accommodation for the Appellant's temporary farm workers between April and November along with an associated amenity building.

2.6 There is agreement that the application, the subject of appeal B, includes:

- an L shaped amenity building the longest sides of which project some 37m and 55m with a width of 15m and a height of just under 4m to ridge, providing a training/cinema room, internet room, library, medical rooms, TV room, office, stores, reception area, shop, kitchen, laundry, sauna, bar and dining area, games area, disco area and gym, and surrounding hardstanding;
- two buildings 22m by 10m providing toilet/changing/shower facilities and further laundry areas;
- site works in connection with the siting of 300 static caravans comprising connections for electricity, water, gas, and foul sewage, along with hardstandings, internal access roads, and a 2.5m high chain link perimeter fence;
- outdoor recreational facilities comprising a swimming pool 12m by 6m, a football pitch and 3 volleyball courts; and
- associated landscaping and open space.

There is no agreement as to whether the application relates simply to operational development or includes a change of use.

2.7 Much of the development proposed has been implemented, work having commenced on the amenity building in April 2004. That building with its associated hardstanding has been substantially constructed and it functions to provide some of the facilities planned, even in its part completed state. The internal access roads and connections for the caravans have been installed across the major part of the site but none of the caravan hardstandings have been constructed. The football pitch is in place but the volleyball courts and swimming pool have yet to be implemented. Work has not started on the two toilet/shower/laundry room buildings. An injunction preventing any further building/construction works was made on 21 May 2004 and on 23 June 2005 an order was made to remove the windows that had subsequently been inserted in the amenity building.¹¹ The windows remain on site and the openings have been boarded up.

2.8 Notwithstanding that the application refers to hardstandings for 300 caravans, there are currently 202 caravans positioned on the site, located largely in accordance with the submitted application drawings and connected to services. In addition, further accommodation has been made available by the positioning of 200 bright yellow metal prefabricated pods on the southern portion of the site. These take up less space than the proposed caravan layout so that there is still an open area of the site remaining where more could be added. The pods provide sleeping accommodation only and just have electricity connections. There are other separate pods containing toilet/washing facilities and 7

¹⁰ Document 10 – CD3

¹¹ Document LA7 – 2 of 5 and 3 of 5

portacabin type kitchen units for use by the workers who sleep in the pods¹². There is a portacabin type building beside the amenity building which functions as an on-site shop. Beside the eastern boundary of the field there is a water storage tank and pump house, electricity sub-station and gas storage compound all serving the site.

- 2.9 The caravans can accommodate 5 people and the pods 4 people, so that the current capacity of the site is 1,808 workers. The Council stated its view at the inquiry that the pods fall within the definition of caravans set out in the Caravan Sites and Control of Development Act 1960.

Determination of the planning applications

- 2.10 The application, the subject of appeal B, was reported to the Council's Northern Area Planning Sub-Committee on 12 May 2004¹³. The officer's report recommended that permission be granted but included a 5-year limitation condition. Although the reason given for the suggested condition in the report is "because the Council is not prepared to permit a residential (caravan) in this location other than on a temporary basis having regard to the special circumstances of the case"; the Appellant appears to have accepted the suggested condition on the basis of that period providing time for the Appellant to prove the sustainability of the business.¹⁴
- 2.11 The Planning Committee resolved to refuse the application contrary to the advice of its officers.¹⁵ Subsequently, the planning application the subject of appeal A was refused by officers under delegated powers on grounds that there was no justification for the sewage plant in the absence of an approved caravan site.

The Appellant's farming operation

- 2.12 The S & A Group is in the business of growing strawberries primarily using polytunnels. It is a thriving business and figures are not fixed as there is continuing expansion. There are 3 S & A companies. S & A Soft Fruit Limited grows all the produce and rents land from the owners. S & A Produce Limited deals with all the handling, packaging and marketing. S & A Property Limited owns all the land that is owned by the operation (that is other than land rented from others) and ownership includes the whole of Brierley Court Farm.
- 2.13 Strawberries are grown at Marden, where the operation originally started, (includes Brook Farm and Oxpasture), Brierley, Wharton and Wickton.¹⁶ The relatively recent additional sites accommodate over 150ha of polytunnels (78ha Brierley, 63ha Wickton, 11.5ha Wharton). The use of polytunnels and choice of the variety of strawberry grown enables cropping from May through to early November.
- 2.14 The business employs 100 permanent staff with "seasonal" workers employed from April through to November. The seasonal workers are accommodated at two sites, Marden and Brierley, the latter introduced in 2004. At the peak picking time in 2004 there were 780 people accommodated at Marden and 640 at Brierley. This year at peak 1,350 were

¹² Document SA11

¹³ Document 10, - CD13

¹⁴ Document 10 – CD7, page 64, para 6

¹⁵ Document SA18

¹⁶ Document AVRA1 – Plans DM2 and DM3

accommodated at Marden and 1,800 at Brierley.¹⁷ The workforce is intended to be flexible so that people can be deployed each day to any of the Appellant's sites depending upon the needs of the business. Transport is provided by a fleet of private buses.

- 2.15 A good proportion of the temporary workforce is provided by way of the Seasonal Agricultural Workers' Scheme (SAWS) administered by the Home Office. The Appellant's quota for 2004 was 1,800 workers and this year rose to 1,937.¹⁸ Under the scheme the welfare of the workers is to be provided for and employers are regulated and inspected.
- 2.16 Strawberries are picked straight into punnets and produce is delivered to the processing building at Marden for packaging prior to delivery to the retailers which include major supermarkets.¹⁹

3. PLANNING POLICY

- 3.1 The development plan for the area includes the Regional Spatial Strategy as contained in Regional Planning Guidance for the West Midlands (RPG11) June 2004, the Hereford and Worcester County Structure Plan 1993 and the Leominster District Local Plan 1999.²⁰ There is also the May 2004 Revised Deposit Draft of the emerging Herefordshire Unitary Development Plan (UDP) which will replace the Structure and Local Plans and this has been the subject of a local inquiry.²¹ A full list of the policies together with their subject titles, as referred to in the evidence for the Appellant and for the Council, is included at section 5 of the Statement of Common Ground.²² A considerable number of additional policies are referred to in the evidence for AVRA. These are listed at the beginning of sections 3, 4, 5, 6, 7, 8 & 9 in the proof of AVRA's witness, with the text included in the corresponding numbered appendices to that proof.²³
- 3.2 The relevance of the many policies referred to will depend, to a degree, on the view taken by the First Secretary of State in relation to the submissions made as to the nature and extent of the application, the subject of appeal B. In very broad terms the policies mentioned include those which address the spatial strategy for the area, generally directing development, including housing, to existing built up areas and resisting unnecessary and unjustified development in the countryside; those which aim to promote agriculture and farm diversification; those seeking to ensure that development is appropriate to its location and does not harm the environment; and those seeking to protect the best agricultural land, the landscape and scheduled ancient monuments. The achievement of sustainable objectives is a common thread which underlies the policies of all the Plans.
- 3.3 The policies referred to in the Council's reasons for issuing the enforcement notices and in the reasons for refusing the planning applications are Structure Plan policies A.1, H.20 and CTC.2 and Local Plan policies A.2(D) and A.9. Structure Plan policy A.1 sets out criteria to be taken into account in considering proposals for development on agricultural land, policy H.20 restricts residential development in the rural areas and policy CTC.2 seeks to

¹⁷ Document SA4

¹⁸ Document SA2, paras.26-2.32

¹⁹ Document SA1, paras.2.1-2.10

²⁰ Document 10 – CD21, 22 & 23

²¹ Document 10 – CD24

²² Document 9

²³ Document AVRA1

protect the landscape quality of Areas of Great Landscape Value. Local Plan policy A.2(D) permits development outside defined settlement boundaries (Brierley does not have a defined settlement boundary) only in a number of identified exceptional circumstances and policy A.9 seeks to conserve and enhance the beauty and amenity of the rural landscape.

- 3.4 The appeal sites do not fall within any particular area of landscape designation but rising land on the southern part of the farm, together with Brierley Wood and Ivington Camp are within an Area of Great Landscape Value.²⁴ In accordance with national guidance this local landscape designation has not been carried forward to the emerging UDP. The *Herefordshire Landscape Character Assessment* (LCA) intended as Supplementary Planning Guidance to the UDP has been the subject of public consultation and is currently an interim draft pending the outcome of the UDP inquiry. It has been endorsed by the members of the Planning Committee.²⁵ The appeal sites lie within an area typical of the landscape character type "Principal Settled Farmlands" in the LCA and this type of landscape is identified as "resilient to change".²⁶
- 3.5 A *Voluntary Code of Practice to control the Siting of Polytunnels in Herefordshire* was introduced in February 2003.²⁷ This was reviewed in 2004 and the renamed *Herefordshire Code of Practice for the Temporary Agricultural Use of Poly tunnels* was agreed by the Council in October 2004.²⁸
- 3.6 Reference has been made to Government policy and advice in Planning Policy Guidance Notes and Statements in particular:
- PPS1 – Delivering Sustainable Development
 - PPG3 – Housing
 - PPS7 – Sustainable Development in Rural Areas
 - PPG18 – Enforcing Planning Control

4. THE CASE FOR THE APPELLANT

The nature and extent of the application DCNC2004/0321/F (Appeal B)

- 4.1 There is no need for permission for the stationing of any number of caravans on the site. Reliance is placed on the permitted development rights conferred by Part 5 of Schedule 2 to the GPDO.²⁹ The Appellant will remove the caravans at the end of the season and would accept a condition defining the season outside of which the caravans would be removed. It follows that the only way the Council could secure the removal of the caravans would be if there were a breach of that condition or because the caravans remained on site other than within the "season". The application, therefore, seeks permission only for operational development: that is the amenity building, the toilet buildings, recreational facilities and "site works" for 300 caravans comprising the hardstandings for the caravans and the access roads within the site.

²⁴ Document AVRA1, plan DM1

²⁵ Document 10 – CD28

²⁶ Document SA2, Plan CPM4

²⁷ Document 10 – CD25

²⁸ Document 10 – CD26

²⁹ Document SA15

- 4.2 This was the meaning and intent of the original application where the words “change of use” in the description of the development on the application form were put in brackets.³⁰ The officer’s report to the Northern Planning Area Committee, the notice of refusal of planning permission and the Council’s pre-inquiry statement bear out this interpretation, in particular in that the words “change of use” have been omitted in the description of the development in all those documents.³¹ The essence of the proposal is intended to be for a “caravan site” (i.e a site for caravans) for the accommodation of farm workers in the relevant season because such a site would need permanent hardstandings for the caravans. That does not mean that the caravans would be on those hardstandings all year or accommodating students throughout the year.
- 4.3 Whether or not this submission is accepted by the First Secretary of State is not of prime importance because making an unnecessary application cannot derogate from an applicant’s existing use rights (*Mounsdon v Weymouth & Melcombe Regis Council 1960 1 QB 645*).³² If the Appellant’s interpretation of the meaning and intent of the application made is not accepted, then the position is that what is now sought is a lesser consent than that originally applied for. The First Secretary of State can lawfully grant permission for lesser development than that originally applied for as has been demonstrated in *Bernard Wheatcroft Ltd. v Secretary of State for the Environment 182 43 P & CR 233*.³³

Part 5 of Schedule 2 to the GPDO

- 4.4 Part 5 of Schedule 2 to the GPDO, in this case by reference to paragraph 7 of schedule 1 to the Caravan Sites and Control of Development Act 1960 (CSCDA), permits the use of land as a caravan site in cases where “a site licence shall not be required for the use as a caravan site of agricultural land for the accommodation during a particular season of a person or persons employed in farming operations on land in the same occupation.”³⁴ The appeal site is agricultural land being part of a farm and it remains so because the caravans are there for an agricultural purpose. The “accommodation of persons employed” is the only part that is qualified by time (ie “the particular season”). There is no qualification/restriction upon the time during which the caravan site can be in existence, the absence of need for a site licence is not qualified by “the particular season.”
- 4.5 The matter of what constitutes a particular season was dealt with conclusively by the Divisional Court in the case of *Vale of White Horse District Council v Mirmalekk-Sani*.³⁵ That judgement includes a passage from the judgement of *North v Brown 1974 231 EG737* and from that it is clear that the farmer was, in the “particular season”, allowed to use caravans for accommodating the labour needed. It is this accommodation that is provided by way of permitted development together with the caravan site. The labour is separate from the permission that allows the “caravan site” to exist without a site licence. In other words, the caravan site does not require a licence provided that it is used “during a particular season”. There is no difference between hop picking (one of the examples used in the judgement) and strawberry picking and there is no difference between picking and planting etc if the seasonal requirements for labour mean that the time for such activities

³⁰ Document 10 – CD3

³¹ Document 10 – CD13 & CD14 and document 7

³² Document SA19 (2 of 3)

³³ Document SA19 (3 of 3)

³⁴ Document SA15

³⁵ Document AVRA5

are within a “particular season” that is less than one year. It is inappropriate and unrealistic to choose one type of agricultural operation to define the word “season”. It is necessary to take all such operations into account and if one happens to be 8 months as opposed to one that lasts only two weeks, that cannot derogate from the proper and natural meaning of the word.

- 4.6 The case of *Ramsey & Ramsey v Secretary of State for the Environment, Transport and the Regions* [2002] EWCA Civ 118 is of no relevance to this case as it deals with Class B of Part 4 of Schedule 2 of the GPDO concerning temporary uses, and there is no read across to Part 5 where “particular season” suggests repetitiveness.³⁶ In this case the site would remain because of the site works for which express permission is sought but that does not impact upon the temporary nature of the accommodation for seasonal workers.
- 4.7 The picking etc of strawberries is a “farming operation”. It might be suggested that one arm of the S & A operation is not the same as another so that the land providing accommodation for the workers is not in “the same occupation” as the farming operation but such a concept would be unreal. Inter-company organisation, probably for fiscal reasons, cannot depart from the reality of it all being one operation. The operations between the sites, run together with Brierley as part, are so interlinked and integrated in both real and practical terms that they must be considered as one operation. The transfer of pickers from one site to another when market demands have to be met, the common use of management and labour, all point to one operation.

The fall back position

- 4.8 If permission is refused for the operational development, the polytunnels and caravans would remain. The only consequence would be unsuitable conditions for the student workers, a greater need for them to go into towns and villages for facilities and entertainment, more transport movements and more potential for behavioural problems because of the inability to exercise reasonable control over their activities.

The polytunnels

- 4.9 Reports reviewing the original code of practice for polytunnels were considered by the Environment Scrutiny Committee on 23 June 2004 and by the Council’s Cabinet on 14 October 2004.³⁷ These make clear that if the Council’s polytunnel code of practice is observed by a grower then there is no need to make an application for express planning permission, but if it is not observed, then the polytunnels may well constitute development requiring planning permission. The report to the Cabinet said that all instances of polytunnel development brought to the Council’s attention had been reviewed to decide in each case whether it was development which requires planning permission and if so what action should be taken.
- 4.10 In relation to the polytunnels erected at Brierley Court, the Appellant made a submission in accordance with the code current at the time on 2 November 2003 indicating that the polytunnels would be in position from November 2003 to August 2006.³⁸ That submission was acknowledged by the Council by letter dated 28 November 2003. A

³⁶ Document AVRA10 (4 of 4)

³⁷ Document SA6, SA7, SA10 and SA17

³⁸ Document 10 – CD27

further letter from the Council dated 1 November 2004 states that the revised code of practice became effective for applications from 27 October 2004.³⁹ Thus it must follow that: the original code applies to the Appellant's use of the polytunnels at Brierley Court until August 2006; provided the Appellant complies with the revised code thereafter a planning application is unlikely to be required for his use of polytunnels; and, in considering the need for the development applied for in these appeals, the operation of the Appellant's strawberry growing business is likely to continue into the immediate foreseeable future.

- 4.11 From a common law position, as opposed to planning law, the Council is effectively estopped from denying the Appellant's entitlement to use polytunnels at Brierley Court Farm. If a Council holds a position that enables investment to be based upon that position, then if it were subsequently to resile from it, a claim for damages could follow.

Planning considerations

- 4.12 The development does not constitute "residential development" in the countryside and the Council's objection on this ground is entirely misconceived as the accommodation (the caravans) is expressly both temporary and for agricultural workers and is permitted development. Planning policies and guidance concerned with housing development are thus of no relevance. In the light of the legal submissions made, what has to be determined in the planning context is the acceptability of the site works, the amenity building, and the sewage works.
- 4.13 Adopted and emerging planning policy and guidance at national and local levels is generally supportive of the needs of agriculture. The site is in the open countryside where development necessary for the efficient running of agricultural enterprises is appropriate, subject to accordance with other specific development plan policies. New agricultural buildings should be sited and designed to ensure that they harmonise with their surroundings.

The need for the development

- 4.14 The agricultural operation is fundamentally dependent upon a sizeable seasonal workforce accommodated in close proximity to the farming activities. The workers are rotated between the different sites as and when picking needs and conditions dictate. Even if there were no polytunnels at Brierley, the S & A Group would continue to operate; the workforce would still be needed. Providing reasonable infrastructure and facilities for the day to day welfare of the workforce, the works the subject of the applications, is an associated need. Accommodation and supporting facilities have to meet appropriate standards set by SAWS and relevant employment and health and safety legislation. In addition to essential requirements, on-site recreational and leisure facilities are also considered necessary to maintain a happy and motivated workforce and to discourage large numbers of people leaving the site to seek entertainment elsewhere outside the control of the Appellant.
- 4.15 In considering alternative sites, regard has been paid to the fundamental requirement that labour must be on hand at short notice. Any alternative site would need to be large enough to accommodate the required number of workers, provide sufficient amenities for their

³⁹ Document SA5

needs, and be viable in terms of transporting them to the growing sites in the locality. Disaggregating across a range of sites would not provide the same opportunity for integrated facilities to support the workers, nor would it be sustainable in transport terms. There are no readily identifiable or viable alternative sites available in the local area for the provision of accommodation at the scale required; the need has to be met at Brierley. Alternative sites have in the past been investigated and used in connection with the Appellant's Marden operation.⁴⁰ The Brierley Court Farm buildings on the edge of the hamlet have been considered as an alternative but these are in use for agricultural storage; the site is no more acceptable in locational terms as Brierley is not a settlement with a defined settlement boundary; and the harmful effect on residents from noise and disturbance would be likely to outweigh any benefit from using this brownfield site.

- 4.16 There is a clear identifiable need for the development, this being that it is essential to the efficient running of the agricultural operation. The proposals thus meet the fundamental requirement of development plan policies relating to new development in the countryside, in particular Structure Plan policy A.3 and Local Plan policy A.2(D).

The effect on the character and appearance of the area

- 4.17 The sewage treatment plant has a negligible impact on the area, being tucked into the corner of the eastern field and evident only by the raised earthwork some 1-1.5m high over an area of approximately 1,000sq.m. The Council's objection to this part of the overall scheme is that there is no justification for it in the countryside rather than that it results in any significant visual or physical harm. It follows therefore that it would be acceptable in the event that the First Secretary of State were to approve the other aspects of the overall scheme.
- 4.18 The application, the subject of appeal B, was accompanied by a design statement demonstrating that due consideration had been given, at the design stage, to the way in which the development would respect the character of the landscape.⁴¹ The amenity building has been sensitively sited on low, level ground to the north of the western field. It is always seen below the skyline. The building is long and low lying clad with terracotta profiled steel sheet to the walls and light grey sheeting to the broad, shallow sloping ridged roof. It appears as a typical agricultural building particularly as all window openings are confined to the inner facing aspect.
- 4.19 Assessment of the development on the rural area should not include the polytunnels or caravans other than in looking at context. Nineteen representative viewpoints have been identified based on the extent of views of the site available from ground level external spaces within the public domain. Assessment of these shows that the impact is extremely limited from the majority of locations.⁴² A further drawing has been produced in response to the Council's evidence to indicate public viewpoints from where the amenity building can be seen.⁴³ More than a negligible impact was only found at 3 locations.
- 4.20 First of all, from Brierley Lane, breaks in the field boundary hedgerow afford brief and partial views of the sewage plant and amenity building. From further to the west along the

⁴⁰ Document SA1, para 4.20

⁴¹ Document SA2, appendix 4

⁴² Document SA2, photoviewpoints 1-19 and plan CPM3

⁴³ Document SA14

lane, however, the impact is greater and identified as being moderate due to the “gappy” nature of the western boundary to the field which is lined with birch trees and little vegetation at ground level. Secondly, footpath 87 crosses Brierley Court Farm on higher ground to the south of the appeal sites and there are views of the roofline and higher elevations of the amenity building over the intervening hedgerow and caravans. This has a minor impact due to the nature of the view and the short duration of time over which it would be experienced by a walker. Thirdly, walking down from Ivington Camp there are extensive views across the Arrow Valley. From here all elements of development are clearly visible, but the impact is minor due to the small size and scale within the vista.

- 4.21 Notwithstanding the landscape drawing submitted with the application, an illustrative mitigation and enhancement scheme is produced which could be the subject of further discussion with the Council.⁴⁴ Its purpose is to show what might be achieved in terms of integration and screening, although there is no intention to completely hide the buildings or other operational development. It should be borne in mind that the development would be seen in the context of caravans and polytunnels which do not form part of the proposals. The drawing demonstrates how, by measures which include the retention and reinforcement of existing hedgerows and the planting of wedges within the caravan site, views would be interrupted and filtered so that in each case identified above the impact would be reduced to a negligible residual impact. The Appellant has also obtained advice in the form of a Hedge Management Plan from Herefordshire FWAG which he intends to implement.⁴⁵
- 4.22 The landscape type “Principal Settled Farmlands” in the Council’s LCA is identified as “resilient to change”. The development at Brierley Court Farm is consistent with this landscape character type which is described as a settled agricultural landscape of domestic character with scattered farms and small villages, mixed farming uses and small winding lanes nestling within a matrix of hedged fields. The impact of the development is not significant on this landscape and the mitigation and enhancement scheme will contribute to the conservation objectives identified for this landscape.⁴⁶
- 4.23 The appeal sites lie outside the AGLV, a designation which is shortly to be dispensed with, and the fields comprising the appeal sites contain none of the important landscape features identified under Local Plan policy A.9.
- 4.24 The development is appropriately sited and designed and has an acceptable impact on the landscape as well as providing an opportunity to improve the visual characteristics of the site by strengthening existing landscape elements and by introducing new landscaping. The requirements of Structure Plan policies CTC.2, CTC.9 and A.3, Local Plan policies A.1 and A.9 and draft UDP policies E13 and LA2 are met.

Other considerations

- 4.25 The siting of the development within the farm was arrived at having regard to the protection of the amenity of existing residents. The isolated location of the site in relation to existing dwellings, with the new access road by-passing Brierley, was considered appropriate given the scale of the infrastructure required and the pattern of activity

⁴⁴ Document SA2, plan CPM5

⁴⁵ Document SA13

⁴⁶ Document SA2, appendix 6

associated with its occupation and use. The self contained nature of the accommodation and facilities enable the Appellant to source reliable and trustworthy workers rather than relying on casual and itinerant labour sources; allows for careful management of their behaviour and activities; and reduces reliance on external facilities and services that might not be able to cope with such a large seasonal demand. These benefits reduce the potential for conflict between the operation and established communities. Provided suitable conditions are imposed to control noise and light emission, the site is sufficiently distant from neighbouring properties so as not to adversely affect residential amenity. The relevant requirements of Structure Plan policy CTC.9, Local Plan policy A1 and draft UDP policy E13 are met.

- 4.26 Meeting the accommodation and day to day needs of workers on site promotes sustainable transport objectives by reducing the need to travel consistent with the transport policies of the development plan, in particular Local Plan policy A1 and draft UDP policy S2.
- 4.27 Given that the development is associated with agriculture, and having regard to the other locational advantages of the site identified, the use of best quality agricultural land is not considered to be an overriding objection. It was not commented upon in the officer's report to Committee or in the reasons for refusing the applications and for issuing the enforcement notices.
- 4.28 The amount of strawberries grown by members of British Summer Fruits Limited has increased from 16,308 tonnes in 2000 to an estimated 42,500 tonnes in 2005. Prior to the introduction of polytunnels, the availability of UK grown soft fruit was restricted to June, July and part of August. Now, due to the use of polytunnels and the development of late fruiting varieties, the British season for soft fruit extends from May to November. This improvement in agricultural production reduces reliance on imported produce and is in the national interest to maintain. The British soft fruit industry is an important and successful rural business able to meet the challenges of a demanding marketplace.⁴⁷
- 4.29 Concerns about the effects of the agricultural operation on soil conditions are without substance and attention is drawn to the report of the effects on the soil at Marden.⁴⁸
- 4.30 There would be nothing unlawful in granting a temporary planning permission for the amenity building. It could be removed at the end of the period or it could be reused to provide community facilities for local residents of the area.

5. THE CASE FOR THE COUNCIL

The nature and extent of the application DCNC2004/0321/F (Appeal B)

- 5.1 Whilst there can be no dispute that enforcement notice 3 covers a material change of use of the land to use for the siting of residential caravans, there has been a dispute as to the extent of the application in appeal B.
- 5.2 Architects prepared the planning application for the Appellant.⁴⁹ It includes, within the description of proposed development, the volunteered words "(change of use)". In response to the question 'type of development' a tick appears against the statement "The

⁴⁷ Document SA9

⁴⁸ Document SA12

⁴⁹ Document 10 – CD3

proposal includes a change of use". These statements are clear and unambiguous, are in plain English, and use a phrase with which property professionals are very familiar. There was no application to amend the planning application. The Council's case on this issue is simple. The application for planning permission means what it says in clear, unambiguous and simple words. Planning permission is granted on an application and its terms are governed by the application. Local planning authorities have no power unilaterally to alter the scope of an application substantially. It follows that nothing said in the report to Committee can alter the scope of the planning application to such a substantial extent as to remove an application for a change of use to a caravan site for 300 caravans.⁵⁰

Part 5 of Schedule 2 to the GPDO

- 5.3 Attention is drawn to the case *Masefield v Taylor*[1987] JPL 721. Where a particular use or operation of land is forbidden by an enforcement notice, permitted development rights under the GPDO do not override that prohibition.⁵¹
- 5.4 Permitted development rights conferred by Part 5 of Schedule 2 to the GPDO permit the use of land as a caravan site in the circumstances specified in paragraphs 2 to 10 of Schedule 1 to the CSCDA. The material words of paragraph 7 of Schedule 1 to that Act are "the use as a caravan site of agricultural land for the accommodation during a particular season of a person or persons employed in farming operations on land in the same occupation".
- 5.5 First of all, in this case the land is not agricultural land: as the planning witness for the Appellant accepted in cross-examination. There has been a material change of use to use as a caravan site. In addition, the use permitted is limited to "a particular season". Neither a literal, nor a purposive interpretation of the statute can possibly justify an 8 month period from 1 April to 30 November for the following reasons: –
- (1) The normal meaning of the word season is a limited period of some thirteen weeks.
 - (2) It is inconceivable that Parliament in 1960 could have intended a provision clearly designed for the fruit and other seasonal agricultural workers of the time to extend to a period of 8 months. Even if very recent farming practices have extended the period during which temporary workers are required, this cannot alter the meaning of a statute passed in 1960. It must be interpreted according to the use of language at that time. The Appellant argues that a later statutory instrument, in this case the 1995 GPDO, might give a different meaning to a word from that given in the Act which the Statutory Instrument adopts. In this case the test for caravan site licensing could be different from that for permitted development rights. If there were a difference between the meaning of "season" in 1960 and that in 2005, it must, applying long-established principles of statutory construction, be the 1960 meaning. "Season" does not mean an 8-month period, but rather is limited to a period of some 13 weeks.
 - (3) Using the Appellant's interpretation of the word "season"; provided there was a single day gap in any one year a horticulturist could rely on Part 5 to provide accommodation for pickers of fruit grown in greenhouses or polytunnels for the remaining 364 days of the year.
 - (4) The CSCDA has been in existence for 45 years. The relevant permitted development right has been in existence in exactly its current form since at least 1988. Neither is

⁵⁰ Document 10 – CD13

⁵¹ Document LA7 (4 of 5) and Encyclopedia of Planning Vol.5, pages 39026-27

an obscure or seldom used piece of legislation. If the Appellant's interpretation had been correct, some example of "season" being interpreted as covering a major part of a year could have been given. No appeal or court decision has been produced to support the case that the permitted development rights could extend for such a long period or even that they could extend beyond 13 weeks. The case of *Vale of White Horse District Council v Mirmalekk-Sani* does not assist since it simply deals with a period of one year.⁵² The case of *Ramsey & Ramsey v Secretary of State for the Environment, Transport and the Regions [2002] EWCA Civ 118* is of more relevance as it is argued that even with the caravans removed, the site would not revert realistically to agricultural use.⁵³

- 5.6 The word "occupation" must be interpreted so as to correspond with the definition of occupier in section 1(3) of CSCDA. The Appellant's evidence in respect of this is uncertain and confused. The clear inference from documentation relating to the SAWS scheme is that the workers are employed by S & A Produce (UK) Limited, which is different from S & A Soft Fruit Limited which grows all the produce, and different again from S & A Property Limited which owns Brierley Court Farm.⁵⁴
- 5.7 Notice 3, which has now taken effect following the withdrawal of the appeal against it, requires the Appellant to stop using any part of the land to which it relates for residential use. Unless appeal B encompasses a change of use, none of the appeals in this case can affect that requirement, requirement (i) of the notice. The Council can secure the removal of the caravans and other moveable structures under the enforcement notice.

The fall back position

- 5.8 The Council doubts that caravans to accommodate the workers would be stationed on the land in accordance with Part 5 permitted development rights if the appeals for all supporting operational development – the roads, hardstandings, amenity building, toilet buildings and sewage works – were dismissed. If they would, however, it calls into question the need for such substantial operational development of a permanent nature.

The polytunnels

- 5.9 A two-year use of polytunnels in accordance with the current Code would not require planning permission. On Brierley Court Farm this expires in November of this year. The Appellant intends to retain them until August 2006 and hence include the bulk of three years' crop. This would have a degree of permanence sufficient to require planning permission (*Skerritts of Nottingham Ltd v Secretary of State for the Environment, Transport and the Regions [2002] 2 P.L.R. 102, CA*).⁵⁵
- 5.10 The Council has not resiled from any agreement. The Council did no more than acknowledge the content of the Appellant's submission under the original polytunnel code⁵⁶. If there had been an agreement, the early use of table-top growing at Brierley Court, as noted by a local resident, would have amounted to a breach of that agreement and

⁵² Document AVRA5

⁵³ Document AVRA10 (4 of 4)

⁵⁴ Document 10 – CD9, pages 155, 178, 180 & 181

⁵⁵ Document AVRA10 (3 of 4)

⁵⁶ Document 10 – CD27

taken the Appellant outside the provisions of both the original Code and the current Code.⁵⁷

- 5.11 The Appellant's assertion that the LPA is estopped from applying the current code is misconceived for four reasons: (1) it is contrary to *Reprotech*,⁵⁸ (2) the local planning authority has not said or done anything that could give rise to an estoppel in any area of law; (3) estoppel is an equitable remedy and as such the maxim "he who comes to equity must come with clean hands applies", so that a party alleging breach of an agreement to operate the original code cannot rely on estoppel if he is in breach of it through table-top growing; (4) the original code on which the Appellant relies to found an estoppel states in its first paragraph that it "is not intended to have effect where, in the opinion of Herefordshire Council as Local Planning Authority (LPA) on the facts available, planning permission is required" and in its final paragraph makes it clear that compliance is a material consideration (an obviously very different matter from the only consideration).
- 5.12 It follows that the polytunnels used to justify the caravan site should be removed in November 2005. If this does not occur, the LPA is likely to enforce.⁵⁹ Even on the Appellant's case, the LPA would be entitled to enforce against the polytunnels in August 2006.

Planning considerations

- 5.13 The appeals in this case are about the creation of the eighth largest settlement in the whole of the County of Herefordshire. It has been created without planning permission in one of the least appropriate places that one could imagine for a new settlement. It is a greenfield site in open countryside well away from any settlement. It is on the best and most versatile agricultural land in an unsustainable location not served by public transport or by any pre-existing facilities.

The need for the development

- 5.14 A clearly established need for this scale of accommodation on this site has not been made out and the development is thus in conflict with policies H.20 of the Structure Plan, A.2 and A.43 of the Local Plan and H7 and H8 of the draft UDP. In national policy terms, the functional test set out in Annex A of PPS7, to establish whether it is essential for one or more workers to be readily available at most times, has not been met, and insufficient information has been provided to satisfy the financial test regarding the viability of the enterprise.
- 5.15 Nonetheless if provision of accommodation for large numbers of seasonal workers to support the Appellant's enterprise is to be made, then such accommodation should have been sought having regard to policy advice on the location of new housing. Paragraph 30 of PPG3 sets out a search sequence for identifying suitable sites starting with the re-use of previously developed land and buildings within urban areas, followed by land adjoining urban areas and ending with new development around nodes in good public transport corridors. No such investigation appears to have been carried out and the site performs badly against the criteria for site selection set out in paragraph 31 of PPG3 in that it is an

⁵⁷ Document 10 – CD26 & 26

⁵⁸ Document AVRA10 (2 of 4)

⁵⁹ Document LA6

isolated greenfield site which is poorly related to public transport and to services and facilities, albeit that some will be provided on site; it is reliant on its own drainage system; there would be no social integration or contribution to sustaining the local community; and the development would occupy the highest quality agricultural land. Even Local Plan policy A.48 and draft UDP policy H10 which make provision for local housing needs require locations within or adjoining rural settlements and with reasonable access to facilities. Local planning policies for the provision of caravans and mobile homes are subject to the same locational requirements as permanent housing (Structure Plan policy RC.2, Local Plan policy A.58, draft UDP policy H11).

- 5.16 The Appellant's assertion of need is contrary to the claimed fallback position. If the site would still function without the operational development, then it cannot be needed. At most (and this is not accepted) it would be desirable. It might be desirable to have some of the facilities such as a swimming pool or a games room, but that does not mean that building these in the countryside can be justified on the ground of need. Traditional fruit and hop-picking families never had such facilities. Even if a need was shown, it has not been shown why a "need" to serve a temporary development justifies substantial operational development including buildings of a permanent nature. If need for premises serving the site had been established, this would not justify permanent structures. The Appellant would have to go further and show why that need could not be met by moveable structures that would have far less impact on the land, such as portacabins, a marquee, or tents. Such genuinely temporary structures could be removed out of season and at the end of the temporary permission.
- 5.17 There is no evidence that the Appellant has properly investigated whether other alternative accommodation in the locality might be found or that there are no appropriate existing buildings that could provide suitable accommodation. The Appellant's search for alternative sites has been limited and self-serving. The arguments in respect of the clearly less unsustainable brownfield site at the western end of Brierley are wholly unconvincing and Marden is clearly more suitable being sited on the edge of a settlement which provides some local facilities as well as access to a bus service.
- 5.18 The scale of accommodation provided is only required during the peak period, mid May to mid July, outside of which numbers of workers are substantially less. A full analysis should have been provided of the need for the amount and a proper investigation of alternative means of providing it.

The effect on the character and appearance of the area

- 5.19 The appeal site is set amongst fields of polytunnels used for strawberry growing. These are reflective, white shiny structures that are highly intrusive in the landscape. They can be seen from many miles and dominate surrounding views. The appeal sites, however, are generally lower lying and less prominent in the landscape. The lower lying topography and surrounding tall hedges and trees give substantial screening from many of the views that are dominated by the polytunnels.
- 5.20 "Principal Settled Farmlands" in the Council's LCA are identified as being "Resilient to Change" because the elements that go towards making up the character of the landscape are suited to most forms of modern farming and land management and are therefore not particularly vulnerable to change. The appeal development has, however, introduced an inappropriate and uncharacteristic element of settlement into a landscape which has a

dispersed pattern of individual farmsteads and hamlets. The dense, clustered pattern of caravans and cabins introduces a jarring and incoherent element to the landscape. The amenity building has an industrial nature at odds with the rural setting.⁶⁰

- 5.21 A visual impact assessment has been carried out in order to understand the magnitude of change arising from the development.⁶¹ Short distance views are available from footpath 87 to the south of the site and from Brierley Lane. From the lane, the roadside hedge and bund constructed at the entrance to the caravan site afford limited, partial views which are considered to be of low adverse impact since the primary views are of the lane itself; and they are of low significance since most people passing would be in vehicles and thus only affected for a short time. From footpath 87, there is only one current view of the development, but in due course the polytunnels would be removed and without them the development would be clearly visible having a high adverse impact during that period.
- 5.22 The appeal sites and associated development of amenity building, caravans, cabins and ancillary works can be most clearly and readily viewed in middle distance views from the public rights of way 78 and 77 between Ivington Park through Ivington Camp and Brierley Wood to Brierley. From this higher land looking north there are clear and uninterrupted views of the site and associated polytunnels in the surrounding landscape. The visual impact of the caravan site development on views from this elevated land is high and adverse. Similarly, the impact on receptors using these public rights of way is high and adverse.
- 5.23 The local landscape designation of AGLV encompasses Ivington Camp and extends north to footpath 87 which passes through the polytunnels on Brierley Court Farm just south of the appeal sites. This designation recognises the scenic qualities of these landscapes, most of which are on elevated land. Local Plan policy A.9 seeks to protect the AGLV and its landscape features (such as Ivington Camp) by only permitting proposals that would not adversely affect their landscape quality, unless the adverse impact could be overcome by the imposition of conditions. Both the original development proposals and the development now constructed adversely affect the landscape quality of the AGLV and Ivington Camp. The development could not be adequately screened to overcome the harm and there are no acceptable mitigation measures in this respect.
- 5.24 In long distance views, it is the impact of the polytunnels rather than the appeal development that is significant. The impact of the caravan site alone is low.
- 5.25 The findings of the visual impact assessment show that the adverse visual impact of the caravans, cabins and amenity building on the views to and from Ivington Camp and the AGLV is significantly high. The development adversely impacts on the visual amenity and character of the AGLV and the development is unacceptable and contrary to Structure Plan policy CTC.2 and Local Plan policy A.9.
- 5.26 As the Appellant declined an invitation to test the Council's landscape evidence by way of cross-examination, it should be afforded great weight.

Other considerations

⁶⁰ Document LA1, photos L-R

⁶¹ Document LA1, section 6, fig 7 & photos A-K

- 5.27 Sustainable development is at the heart of the planning system. There is limited accordance with some aspects of sustainability in that, to a certain degree, the proposals provide accommodation close to people's work, with some facilities provided on site and limited arrangements are made for conveying residents off site by non-car modes. The development also makes a contribution to a competitive and profitable agricultural enterprise but it does not have to be on the appeal site to do so. These factors are outweighed by the clear conflicts with other aspects of the sustainable development strategy: the promotion of social inclusion, the protection of the countryside for its own sake, the loss of the best and most versatile agricultural land (Structure Plan policy A.1(i), Local Plan policy A.41, draft UDP policy E15(2)), the emphasis on re-use of previously developed land, proximity to facilities and public transport and choice of modes of travel.
- 5.28 It would be inappropriate to require the amenity building, which has a permanent nature, to be demolished after 5 years. The argument that it might be reused at the end of its first use to provide community facilities for the local population does not add to the case for it. Its isolated position and lack of accessibility renders the site inappropriate for such a form of development.
- 5.29 The Council does not dispute that if planning permission were to be granted for the caravan site then there would be sufficient justification to grant permission for the sewage treatment plant.

Conclusion

- 5.30 This is one of the worst sites possible for development and if the appeals were to be allowed little of the countryside would be safe from similar inappropriate development. Any farmer or horticulturalist who wanted to operate a labour-intensive operation could do the same as the Appellant. There would be a threat of landowners placing development virtually wherever they chose instead of the limited threat of necessary development in places carefully selected through the development plan process so as to minimise environmental harm.

6. THE CASE FOR AVRA

- 6.1 The Arrow Valley Residents' Association was formed in March 2004 in response to concerns arising from development at Brierley Court Farm. Background on the Association is given in Document AVRA9.

The scope of considerations relevant to application DCNC2004/0321/F (Appeal B)

- 6.2 The planning system recognises that all the side effects of a given development must be taken into account (*Collis Radio Ltd and Another v Secretary of State for the Environment*(1975) 29 P&CR 390).⁶² The appeal proposals are promoted on the basis that they are needed if the overall farming operation is to be efficiently run. If there were no need, there could be no justification for allowing this very substantial development, even if it is found to be confined to the operational elements, in the open countryside.
- 6.3 On the basis that the caravan site was permitted development, the appeal proposals, which are necessary if the enterprise is to be efficiently run, make it likely that those permitted development rights will continue to be exercised. Similarly, even if the polytunnels do not

⁶² Document 1

require planning permission, the appeal proposals, as a necessary part of the enterprise, make it more likely that the polytunnels would have to be tolerated in the future. The caravan site and polytunnels are thus part of the wider impact of the appeal proposals and their harmful impact on the rural area should be taken into account.

- 6.4 Conversely, if the caravan site is not permitted development and the polytunnels do require planning permission, allowing the appeal would make it more difficult to refuse applications for those developments. The impact of the caravans and polytunnels would be more likely to be perpetuated in the future and those impacts are, therefore, a material consideration. In addition, the Appellant's business is dynamic and growing with two major sites developed this season (Wharton and Wickton). Allowing the appeals would make potential for future expansion easier, another matter to be taken into account.
- 6.5 The physical impact of the farming operation includes:
- some 8ha of road network and hardstandings;
 - over 400 caravans;
 - an amenity building in excess of 1,100sq.m.;
 - two toilet/shower blocks;
 - the sewage treatment plant;
 - water tanks – 10m high and 20m diameter;
 - over 150ha of polytunnels (78ha Brierley, 63ha Wickton, 11.5ha Wharton)

Part 5 of Schedule 2 to the GPDO

- 6.6 Where permitted development rights derive from a use of land, they cannot be relied upon unless that use of land is itself lawful. There is no expectation that a finding will be made in these appeals on the lawfulness of the polytunnels, but decisions cannot be made based on the assumption that they are lawful. It therefore follows that it cannot be assumed that Part 5 rights are available because it is not known whether there is a lawful farming operation on which to base those rights.
- 6.7 Part 5 permitted development rights cannot be relied upon because the site is used as a permanent caravan site. Section 57(3) of the Act operates on the basis that where a development order authorises a use for a limited period, the land will revert to its "normal" use at the end of the period.
- 6.8 Physical changes to the land are relevant in determining whether there is a use for a limited period superimposed on an underlying normal use where it reverts to its normal use during periods of inactivity or whether there is a permanent intermittent use where the underlying normal use is no longer maintained (*Ramsey & Ramsey v Secretary of State for the Environment, Transport and the Regions [2002] EWCA Civ 118*).⁶³ Where the physical changes to the land make it difficult or impossible for the site to revert realistically to its previous normal use then a material change of use is likely to have occurred.
- 6.9 Where there is a new permanent intermittent use from the outset with no express grant of planning permission, there is a breach of planning control from the outset and no reliance can be placed upon GPDO rights. In this case reversion to the normal agricultural use has not taken place, is unlikely to take place in practice and the physical works would make it difficult or impossible to revert to its normal use. The level of investment, the sheer scale

⁶³ Document AVRA10 (4 of 4)

of the use, the physical manifestations which would remain on the site in winter months even if the caravans were removed, the scale of the operation that would be required to remove and replace the caravans, all indicate that this is, in reality, a permanent caravan site. There are no plans in place for removing the caravans to another identified site and even if they were removed the use of the site would not revert to agriculture, it would be a fully equipped empty caravan site able to take caravans at any time.

- 6.10 The First Secretary of State is invited to use his power under s177(1)(c) of the Act to determine whether the existing use of land is lawful.
- 6.11 The words of restriction “in the same occupation” in the CSCDA should be interpreted as having a restricting effect so that the planning system is able to control the scale of development introduced pursuant to them. It should not be interpreted widely to mean that the caravan site can serve any farming unit which happens to be occupied by the same legal entity because that would not restrict the location of the site to within the farming unit served and the size of the site could not be controlled as it could serve any number of farming units. In addition, the Appellant has produced no evidence from which it can be concluded that the caravan site is in the same occupation as the farming operations. Section 1(3) of the CSCDA defines occupation and occupier in terms of a single legal personality, it has to be a single legal entity and not an operation. The strawberry growing areas are rented by S & A Soft Fruits whereas students from the SAWS scheme are obtained by S & A Produce.⁶⁴
- 6.12 The use of the caravans from April to November does not constitute a “particular season” for the purposes of Part 5. Attention is drawn to an Inspector’s decision in December 2002 wherein he expressed his view that the words “particular season” are intended to apply only for the duration of one or more elements of the production of any given crop and not to its overall cycle.⁶⁵

The fall back position

- 6.13 No evidence has been provided in relation to the fall back, for example how a caravan site operated in accordance with Part 5 permitted development rights, and without all the supporting development, would meet the standards for SAWS. On the basis of *Skerritts of Nottingham Ltd v Secretary of State for the Environment, Transport and the Regions* [2002] 2 P.L.R. 102, CA., a caravan site on such a massive scale would have a degree of permanence such that it would not fall within Part 5.⁶⁶

The polytunnels

- 6.14 Using both literal and purposive approaches to statutory construction, the polytunnels are “structures” or “erections” which have been produced as a result of a building, engineering, mining or other operation. They fall within the scope of planning control and must be authorised by a grant of planning permission.
- 6.15 The Council’s current polytunnel code works on the assumption that polytunnels do not require planning permission if they are only kept in position for two years. This is impossible to reconcile with the observation of the Court of Appeal in *Skerritts of*

⁶⁴ Document 9 – CD9

⁶⁵ Document AVRA4

⁶⁶ Document AVRA10

Nottingham Ltd v Secretary of State for the Environment, Transport and the Regions [2002] 2 P.L.R. 102, CA. On the basis of that judgement, permission is required when the development remains in situ for long enough “to be of significance in the planning context”. Massive structures such as those at Brierley Court Farm are immediately significant in the planning context from the day they are erected.

Planning considerations

- 6.16 In the absence of a justified need, the appeals should be dismissed on the basis not only of their intrinsically harmful nature, but also of the wider impacts attributable to the other developments which depend upon them. The development occupies an isolated site outside any recognised settlement. The option of expanding the Appellant’s existing caravan site at Marden should be explored as that site has a more sustainable location.

The need for the development

- 6.17 The Appellant has justified the development on the assumed need for accommodation of workers engaged in the polytunnel strawberry growing enterprise but that activity has not been shown to be lawful. This undermines the case of need. Even if the enterprise is lawful, there is no functional requirement as set out in Annex A to PPS7 for the accommodation to be located at Brierley. The Appellant operates the sites at Wickton and Wharton on a similar scale without any on site accommodation.

The effect on the character and appearance of the area

- 6.18 The polytunnels are highly visible from a wide area stretching from Croft Castle in the north to Ivington Camp in the south and from Brainstree Cross in the west to the east side of Leominster to the east.⁶⁷ The polytunnels are an alien feature in the countryside and the scale of the development at Brierley wrecks the splendid views of wooded ridges and distant views of hills across the rolling farmland of the Arrow Valley. The caravan site is very prominent when viewed from the south and is out of keeping with the rural nature of the area in scale, density and character. It stands out as intrusive and discordant even though it is surrounded by polytunnels.
- 6.19 The appeal proposals and associated polytunnel development adversely affect many of the views towards the AGLV as well as many of the views from within the AGLV. Neither can be successfully screened because of the topography of the area and the scale of the developments. The development is seriously harmful to the character of the countryside, an acknowledged interest of importance in its own right.
- 6.20 The proposal adversely affects the setting of a scheduled ancient monument by changing the green sloped setting, to one of shiny white polytunnels contrary to Local Plan policy A.22. It damages the landscape, by virtually eliminating every characteristic or quality that has been recognised as contributing to its value and conflicts with an array of policies, both national and local, which seek to protect the countryside and environmental resources. The setting of Leominster (and of Ivington and Brierley) is damaged by introducing development, on much the same scale as the town itself, just beyond its rural boundary.
- 6.21 The development will damage the valued night time characteristics of the landscape, by introducing new artificial light sources, from 400 units of accommodation and externally

⁶⁷ Document AVRA1, photos 1-29

across 8.6 hectares of land, to a previously unlit area. The distinction between countryside and the outskirts of Leominster would be blurred by the urbanising effect of the lighting. The tranquility of the countryside would be harmed by introducing a new population of some 2000 people, far in excess of that of any of the surrounding settlements, into the middle of the English countryside, hitherto a quiet, isolated rural location. The concentration of such a large number of young people and the consequential activity associated with their occupation of the site would inevitably disturb the peaceful, quiet rural character.

- 6.22 Lorry movements associated with the farming operation, and large numbers of bus movements transporting workers between sites results in a level of activity that is out of keeping with the rural nature of the area. The recreational value of the rights of way in the area have been undermined not only by the despoilation of the landscape, but also by producing an intimidating environment, which at one stage, forces a public footpath to go through a polytunnel.

Other considerations.

- 6.23 Residents are concerned about the biological changes to the environment that might be brought about by the intensive farming activity undertaken. There is also concern about potential expansion of the enterprise which could, in theory, cover much of the Arrow River valley floor.⁶⁸ It is understood that the Appellant has recently purchased Arrow Fisheries to the north of Brierley, and approaches have also been made to neighbours to purchase/rent their land.
- 6.24 Tourism is one of the largest contributors to the economy of Herefordshire and it relies upon the quintessential English and deeply rural landscape. The polytunnels and caravan site have a huge negative impact on the landscape and quiet enjoyment of the countryside which must have a consequential negative impact on tourism.

Conclusion

- 6.25 The development of the caravan site, with or without the associated development has a huge detrimental impact on the character and appearance of the rural area. It is contrary to national and local planning policies across a wide range of topics including countryside quality and character; landscape quality; settlement hierarchy; housing policy, including residential development in the countryside and mobile homes; re-use of previously developed land; heritage protection; sustainability and good design.
- 6.26 The sheer scale of the harmful cumulative impact would demand a robust and unambiguous case of need to outweigh it. However, there is no case of need to justify this massive new enterprise in the heart of the Herefordshire countryside. The agricultural justification for the caravan site is fundamentally flawed in that uncertainty exists as to the lawfulness of the agricultural enterprise that it is to serve. The appeals, which must concern the development upon which they depend, should be dismissed.

7. THE CASE MADE BY INTERESTED PERSONS

Representations made during the Council's consideration of the applications

⁶⁸ Document AVRA2, appendix 2

- 7.1 Consultations with outside bodies during consideration of the applications included the Environment Agency, the River Lugg Internal Drainage Board and English Heritage. The first two of these bodies raised no objection in principle. English Heritage commented on the very large size of the development and said that, in the context of the essentially rural nature of the area, it would impact upon the setting of the major Scheduled Hillfort of Ivington Camp. However, it notes that the distance of the site from the hillfort and the fact that it would be partially screened from the hillfort by Brierley Wood would go some way towards mitigating the visual impact of the development upon the setting of the monument. A condition requiring an archaeological evaluation is recommended.⁶⁹
- 7.2 A substantial number of representations were received in response to the application the subject of appeal B. Copies of these accompany the appeal questionnaire and a summary of the representations made is included in the officer's report to Committee.⁷⁰ In brief and taken from that report, objections were received from the following bodies/organisations: Leominster Town Council, Hope-under-Dinmore Parish Council, Ford and Stoke Prior Parish Council, Monkland and Stretford Parish Council, Leominster Civic Trust, Council for the Protection of Rural England, the Green Party and AVRA. A petition with 283 signatures and 42 letters of objection were received from or on behalf of individuals with addresses in Ivington, Cockcroft, Aulden, Knapton Green, Newtown, Elms Green, Hope-under-Dinmore, Leominster, Birley, Hereford and two from further afield. A further petition with 70 signatures was submitted urging the Council to take action to halt the unauthorised development. Representations from residents of Brierley, including the Brierley Residents' Committee expressed concerns and requested assurances rather than wholly opposing the development. Fifty seven letters of support were submitted by 48 businesses. Supporting representations were also made by the National Farmers Union, Hereford and Worcester Chamber of Commerce, by 24 individuals within the County, from 8 outside the County, from 7 with no address and from two of the Appellant's employees.

Oral representation to the inquiry

- 7.3 **Leominster Civic Trust** spoke to the inquiry, primarily to ask questions of the Appellant's witnesses and to draw attention to its letter of representation submitted at the application stage.⁷¹ The main additional points are that table tops for growing had been observed at Brierley Court Farm in October 2003 when the operation was being set up; that expansion of the business is not restricted by agricultural land quality when table top growing is employed; and that there is concern about damage to the soil arising from the intensive farming method and associated use of chemicals.⁷²

Written representations made at appeal stage

- 7.4 **The Brierley Residents' Group** say that having lived with polytunnels for two years their views on them have changed. Whilst they are a blot on the landscape viewed from a distance, the visual offence is not usually apparent close by due to screening afforded by high hedges. Wider verges around the fields are retained and an increase in wildlife is apparent. There also seems to be less use of chemicals than with the previous hop farm.

⁶⁹ Document 5, Document 10 – CD13 pages 245-247

⁷⁰ Document 5, Document 10 – CD13 pages 253-262

⁷¹ Document IP2

⁷² Document IP3 and IP4

The Appellant has consulted with the residents and their experience is that concerns have been dealt with efficiently and sympathetically. The farm is well managed so that negative impacts are ameliorated as far as is possible, the new road taking all farm traffic was very welcome. The location of the caravan site, approximately half way between the settlements of Brierley and Ivington, has the least impact on the main residential areas and residents have not experienced any noise or nuisance from the site. The workers are friendly and polite and it is right that they should be provided with good facilities. Residents oppose the suggestion that accommodation should be provided on the old hop shed area within the hamlet of Brierley.⁷³

- 7.5 Nine further letters from individuals have been received, 7 opposing the development and two in support.⁷⁴ A further petition in opposition has also been submitted containing some 69 signatures.

8. CONDITIONS

- 8.1 The final draft list of conditions discussed between the Appellant and the Council can be found at document 12. These were the subject of further discussion during the inquiry. There is one condition suggested for appeal A and the rest relate to appeal B. The conditions are generally worded having regard to the Appellant's interpretation of the nature of appeal B; ie that it is for the operational development only. Separate conditions have not been considered in the event that planning permission were to be granted for the deemed planning applications accompanying the two enforcement appeals.
- 8.2 Looking at appeal B, the first suggested condition limits the occupation of the caravans located on the development approved to agricultural workers employed by the Appellant. AVRA would prefer it to be more restrictive, applying to those workers employed only at Brierley in order to limit overall size and related activity. The Appellant would not find that acceptable as the site is intended to accommodate workers employed in the general operation in the area; workers are distributed between the sites on a day to day basis; and such a limitation would require more caravan sites to be established elsewhere.
- 8.3 The second condition requires further details of the finishing materials for the buildings and it was agreed that the wording might be simplified. The third condition requiring an archaeological investigation was agreed to be unnecessary since some work has already been done in this area. A replacement condition, to be found at document 13, is agreed affording an archaeologist access to the site to observe and record.
- 8.4 It was agreed that condition 4 should prevent amplified sound as well as music outside specified hours. There is a drafting error in that "between" should read "outside the hours of". AVRA object to the final part of the condition which would allow exceptions to be made with the agreement of the local planning authority as this would increase the intrusion and the Council is of the opinion that it would be difficult to administer. It was agreed that condition 5 would be better worded to prevent any external lighting other than in accordance with an approved scheme and that that scheme might include details of the hours of use of the lighting.

⁷³ Document IP1

⁷⁴ Document 3

- 8.5 Conditions 6 and 8 are concerned with achieving a satisfactory access to Brierley Lane on land outside the appeal site but nonetheless within the Appellant's holding, and it was agreed that the two conditions might be put together. Condition 7 is concerned to ensure the provision of an adequate parking, servicing and circulation area for the amenity building.
- 8.6 Condition 9 requires details of the on-site roads and drains and condition 13 details of surface water drainage works to be submitted. The access track connecting to Brierley Lane is unsurfaced and condition 10 requires the installation of wheel cleaning apparatus for vehicles. Condition 11 seeks the provision of cycle parking and condition 12 the operation of an approved Green Travel Plan.
- 8.7 Condition 14 would limit the permission to a temporary period of 5 years.
- 8.8 Conditions 15 and 16 are concerned with the provision of hard and soft landscape works for the site and with maintenance thereafter for a 5 year period.
- 8.9 Although a drawing was submitted with the application indicating the layout of the site, this has been varied, and the parties consider that a condition would be appropriate requiring a further drawing to be submitted. It was agreed that the wording of the condition should begin "Notwithstanding, the details shown on the submitted drawings, ...".
- 8.10 In addition to the conditions suggested in document 12, a number of others were discussed during the inquiry. The question of whether the number of caravans should be limited to 300 was raised; supported by the Council and by AVRA. The Appellant said that all that was being asked for was 300 hardstandings (the operational development) and that there could be no upper limit on the number of caravans that could be stationed on the site pursuant to Part 5 of Schedule 2 to the GPDO.
- 8.11 In addition, there was discussion as to whether a condition should be imposed requiring the caravans to be taken off the site when not in use. In relation to rights exercised under the GPDO, it was agreed that it would not be appropriate to attempt to define a "particular season" within a planning permission. However, if the permission embraces the use as a caravan site then a condition might be imposed requiring removal for the 4 months when not in use from 1 December to 31 March. The Appellant considered that if permission were to be granted for a permanent caravan site then the caravans should be allowed to remain on the site although a condition might be included to prevent them being used for that time period. The Council and AVRA were of the view that their removal for 4 months each year would help to reduce the environmental impact.
- 8.12 If it were considered that the permission embraces a change of use, then there was agreement that the finished colours of the caravans could be the subject of a detail to be submitted for approval. AVRA also suggested that there should be a limit on the number of organised outdoor recreational/social/sporting events. This was resisted by both the Appellant and by the Council as it was felt that it would not be possible to be precise in defining what might be an "organised" event. The Council said that the hours of use of the football pitch and volleyball courts might be restricted but it was pointed out these would be self regulating as there would be no lighting.

- 8.13 In relation to appeal A, only one condition was suggested requiring removal after 5 years, to coincide with the time limit suggested for appeal B, or if connection were made to the main sewage treatment plant.

9. CONCLUSIONS

- 9.1 The following conclusions are based on my report of the oral and written representations, and on my inspection of the site and its surroundings. In this section, the numbers in square brackets [n] refer to paragraphs in the preceding sections of the report from which these conclusions are drawn.

The current situation

- 9.2 Caravans were brought onto the western field to accommodate workers who arrived in the spring of 2004 and they have since remained in situ and the numbers have been added to. A change in the use of the land from agricultural use to use as a caravan site has thus occurred. Following the withdrawal of the appeal against notice 3, there is an enforcement notice in effect which requires the cessation of that use, the removal of the caravans and all associated site works and the restoration of the land to its former condition. With the appeal withdrawn, the First Secretary of State has no power under s177(1)(c) to determine whether the existing use of land is lawful, as has been requested by AVRA, but in any event it seems to me to be unnecessary to do so in the light of an effective notice addressing the use. [1.4, 2.14, 5.1, 6.10]
- 9.3 It is not right to suggest that the Council cannot secure removal of the caravans. Permitted development rights cannot be applied retrospectively and the permanent siting of the caravans indicates that the development was not undertaken in the first instance as permitted development pursuant to Part 5 of Schedule 2 to the GPDO (by reference to paragraph 7 of Schedule 1 to the CSCDA). Indeed no ground (c) appeal was lodged against notice 3, ie that the matters alleged in the notice do not constitute a breach of control, a matter that I specifically checked at the pre-inquiry meeting. [1.1, 4.1, 5.7, 6.7-6.9]
- 9.4 The Council, by reference to *Masefield v Taylor* [1987] JPL 721 says that permitted development rights do not override the prohibition imposed where a particular use or operation of land is forbidden by an enforcement notice. This is a matter for the First Secretary of State but as the JPL's comment on the case at page 723 points out, the learned Judge did not give any previous authority for his view. Furthermore, his view on the matter does not appear to be decisive to the particular question he was determining in that case. As a matter of general principle, my view is that permitted development rights cannot be removed by an enforcement notice which can only relate to breaches of planning control. Development that might be carried out as permitted development in accordance with a development order cannot be regarded as a breach of planning control. To interpret otherwise would be to enable over-enforcement by prohibiting activities that might lawfully be undertaken. There are separate mechanisms designed to remove permitted development rights where necessary, for example in Article 4 of the GPDO and by way of a condition imposed on a planning permission. [5.3]
- 9.5 Whether or not the pods comprise caravans within the meaning of the CSCDA is not of importance to the determination of these appeals as the development on site with a total of 402 units of accommodation is not that applied for which seeks permission for 300 caravans. [2.9]

The nature and extent of the application DCNC2004/0321/F (Appeal B)

- 9.6 I do not accept the Appellant's argument that the application, the subject of appeal B, was originally intended to relate only to operational development, that is the construction of an amenity building, toilet buildings and site works (roads, hardstandings etc) and not to the change of use to a caravan site to provide accommodation for the workers. I also do not accept that that was the way the Council originally interpreted it. The application makes reference to "change of use" in two separate places and none of the information submitted with the application or during consideration of the proposal by the Council says that Part 5, Schedule 2 GPDO rights are to be relied upon with the caravans to be removed out of season.
- 9.7 Furthermore, the submission included an explanation of why the Appellant had found it necessary to commence development before a decision was taken. The development carried out and that which was being applied for, includes the year round stationing of caravans. The Council may have omitted "(change of use)" from the description of development in various documents including the decision notice, but it is quite clear from the report to Committee that the use of the site as a caravan park was being considered. One of the main issues identified for consideration in the report is the justification for residential accommodation in the countryside, a matter that would not be relevant if no change of use were involved. In addition, it seems to me significant that no site has been identified for the storage of the caravans during the winter months or consideration given to the logistics of such a considerable operation. [4.1, 4.2, 5.1, 5.2, 6.9]
- 9.8 Notwithstanding the above, I believe that the Appellant is right in saying that the matter is not of prime importance because, in principle, the Appellant may seek, and the First Secretary of State may grant, a planning permission for a lesser development than that applied for (*Bernard Wheatcroft Ltd. v Secretary of State for the Environment* 182 43 P & CR 233). However, in deciding whether it is appropriate to do so; as well as taking into account the consideration as to whether the development would be substantially different from that applied for; one of the relevant tests is severability, ie whether those parts excluded are severable from the remainder. [4.3]
- 9.9 As a starting point, the lawful use of the site is for agriculture. The operational development applied for includes 3 buildings of significant size providing functional, administrative and recreational facilities for the workers to be accommodated on the site; internal access roads; a large area of hardstanding about the main building; hardstandings for 300 caravans; individual water, electricity, gas and foul sewage connections for each caravan standing; and outdoor recreational facilities comprising a swimming pool, football pitch and volleyball courts. This development would be of a permanent nature, albeit that the Appellant is willing to accept a temporary permission, and it would leave little of the 8.6ha appeal site unaltered. [2.6]
- 9.10 Whilst it is ultimately a matter for the First Secretary of State, it seems to me that, as a matter of construction, any permission granted for the operational development would carry with it the authority to use the land as a caravan site since it would have permitted all the operational development necessary to enable and sustain that use. The use cannot be severed from the operational development and the application must be considered as one incorporating a change of use. The implementation of the works would, as a matter of fact and degree, effect a material change in the character of the land such that it would amount

to a change of use of the site from agriculture to a caravan site; in other words the agricultural use would be replaced by the permanent infrastructure of a caravan site. In these circumstances whether or not the caravans were to be taken off the site for part of the year would be immaterial, the use would not revert to agriculture. In these circumstances, the effect of the caravans on the character and appearance of the area is as much a matter to be taken into account as the impact of the operational development.

The relevance of the polytunnels

- 9.11 There is no doubt that the polytunnels are a fundamental component of the Appellant's farming enterprise and that this is a thriving and expanding business. There is a good deal of current controversy, disagreement, and no small amount of ill feeling between the Council, AVRA and the Appellant (and possibly other growers) in relation to these structures and whether they require planning permission. These appeals are not the appropriate forum to make a determination in this matter. There are separate procedures available to formally determine whether development of land is lawful by applying for a Certificate of Lawfulness under s191 or 192 of the Act. [2.12-2.16, 4.9-4.11, 5.9-5.12, 6.14, 6.15]
- 9.12 Nonetheless since the need for the accommodation is dependent upon a farming enterprise which necessarily involves the use of polytunnels, whether the Appellant is likely to be able to continue to use them is a consideration to be taken into account in the assessment of the need for the workers' accommodation.
- 9.13 In this respect, the Council's code of practice for the temporary use of polytunnels indicates the Council's expectation that the structures will continue to be used in Herefordshire. This suggests a tolerance for a temporary period even in the event that planning permission was to be required. Having regard to the changes that their use has brought about in the British soft fruit business, the scale of the Appellant's operation, and the Council's attitude towards their use set out in the code of practice, it seems to me to be likely that the Appellant will be able to continue to use polytunnels, albeit that they may be positioned on different sites from time to time. Moreover, the Appellant is actively seeking additional land in the area so that his choice of sites from which to operate is likely to grow with a corresponding ability to "rest" other sites. I conclude, on the balance of probability, that the Appellant's polytunnel farming operation is likely to continue in the foreseeable future. [3.5, 4.28, 6.23]
- 9.14 The second matter concerning the polytunnels is whether their impact on the environment should be taken into account in determining these appeals on grounds that if the appeals were to be allowed, that would make it more likely that the polytunnels would have to be tolerated in the future and the structures should thus be part of the wider impact of the development on the environment. My view is that it is not necessary to consider the impact of the polytunnels in determining these appeals and that to do so would prejudice any future application for the retention of polytunnels. My reason for saying so is that the size and scale of the Appellant's business, and the amount of money invested in it, is such that if these appeals were to be unsuccessful I believe that an alternative solution would be sought and, most probably found, to solve the accommodation problem. It seems to me to be unrealistic to contemplate that the dismissal of these appeals would result in the removal of polytunnels from the area. [6.2-6.4]

Part 5 of Schedule 2 to the GPDO

- 9.15 If the First Secretary of State agrees that a permanent change of use to a caravan site would be brought about by the grant of planning permission for the operational development proposed (whether or not the caravans were removed for 4 months of the year), then it follows that Part 5 GPDO rights could not apply as described by the Appellant because paragraph 7 of Schedule 1 to the CSCDA says that a site licence shall not be required for the use as a caravan site of agricultural land. I do not accept the Appellant's argument that the land is agricultural because it is part of a farm and that it remains so because the caravans are there for an agricultural purpose. Whilst the land might still form part of the overall holding, it would no longer be agricultural land to which the permitted development rights could apply. The lawful use would be a materially different use: that of a permanent caravan site providing residential accommodation, (ie. a residential use) albeit that those housed might be employed in agriculture. [4.4, 5.5, 6.7, 6.9]
- 9.16 Furthermore, it does not seem to me that the Appellant can be right in saying that there is no restriction in Part 5 upon the time during which the caravan site can be in existence as the only element qualified by time is "accommodation of persons employed". Condition A.1 of Part 5 clearly states that the use shall be discontinued when the specified circumstances cease to exist, those circumstances embrace "...the accommodation during a particular season of a person or persons employed.." [4.4]
- 9.17 Much was made during the inquiry about the interpretation of Part 5 permitted development rights, in particular the meaning of the phrases "a particular season" and "in the same occupation". These are matters of law and, if the First Secretary of State agrees that the use is part and parcel of the appeal B proposals and cannot be separated out then the interpretation is not critical to the determination of these appeals. Again I refer to the separate procedures available to formally determine whether a use of land is lawful by applying for a Certificate of Lawfulness under s191 or 192 of the Act. [4.5-4.7, 5.5-5.6, 6.11-6.12]
- 9.18 Nonetheless, Part 5 permitted development rights do have relevance in considering the "fall back" position in the event that planning permission is refused for the appeal proposals and I consider this further in my assessment of the planning merits of the case. At this stage, however, I make the point that the existing development would need to be removed and there to have been a material change of use of the land to agriculture before its use as a caravan site as permitted development under Part 5 could be implemented. [4.8, 5.8, 6.13]

Planning considerations

- 9.19 The Act requires the appeals to be determined in accordance with the development plan unless material considerations indicate otherwise. On the basis that the First Secretary of State accepts my views as set out above, the planning application and deemed planning applications concern the erection of the amenity building (notice 1), the installation of a sewage treatment plant and pumping station (notice 2 and appeal A), and the erection of an amenity building, toilet buildings and site works for 300 unit caravan standing (change of use) for farm workers accommodation (appeal B). I believe the main considerations upon which the decisions should be based are:
- 1) the effect of the developments on the character and appearance of the rural area; and

- 2) whether there is a justifiable need for the developments on the appeal sites having regard to policies aimed at protecting the countryside from unnecessary development and at achieving sustainable patterns of development.
- 9.20 A wide range of policies from the development plan and emerging UDP are relevant to the consideration of these issues. As a package, their general thrust must be to foster economic growth and well being by providing for necessary development but in a manner which avoids or at least minimises damage to interests of acknowledged importance. In other words the overall aim is to achieve a sustainable pattern of development for the area. [3.1-3.4]
- 9.21 In relation to the sewage treatment plant and pumping station, no party argues that the actual impact of this development is of great significance as the works are tucked into the corner of a field and have the appearance of a grassed earth mound some 1-1.5m high. Without the caravan site, the sewage works would not be required and the development would thus be contrary to planning policies which seek to resist unnecessary development in countryside locations. In the event that planning permission is granted for the caravan site, however, there is no dispute between the parties that the plant would be needed, and no party sought to argue that that need would not justify the countryside location or would not outweigh the small physical/visual intrusion. I find no reason to disagree and thus my recommendations on the appeals relating to notice 2 and appeal A are dependent upon my findings on appeal B. [4.17, 5.29]

Character and appearance

- 9.22 That part of the Arrow Valley which includes Brierley Court Farm is well described in the Council's LCA of the landscape character type Principal Settled Farmlands. The landscape has a notably domestic character defined chiefly by its patchwork field pattern framed by hedgerows with thinly scattered hedgerow trees and by the dispersed, scattered farms and small villages and hamlets of which Brierley is one. Brierley Lane is typical of one of the quiet narrow winding lanes which thread their way between the hedge-lined fields. As the land rises to the south of the farm, it meets the steeply wooded hillside of Brierley Wood in sharp and attractive contrast. [2.1, 3.4, 4.22, 5.20]
- 9.23 In such a landscape, a large field of over 8ha laid out as a caravan site, in an isolated position unrelated to any existing permanent built development, appears entirely out of character with the agricultural rural scene. In its favour, one might say that the caravan site would leave the field pattern of the area unchanged, and that it would provide the opportunity to strengthen hedgerow planting. However, the layout of the site with regimented rows of internal access roads, hardstandings and caravans would, (and, insofar as a good part of the development has already been carried out does), result in a harsh, imposing and alien form of development, a concentrated residential encampment, which extinguishes entirely any positive contribution that that field makes to the character of the countryside.
- 9.24 The L-shaped amenity building does not, in my view, appear as an agricultural building. With extensive hardsurfacing and parking areas on the approach to it, domestic sized openings, and a rear outdoor recreational courtyard overlooked by a generous number of large glazed openings, I found its nature to wholly reflect its function; that is the administrative and recreational centre for the site. Whilst it might be low in height it is a substantial building and its mass would be further added to with the addition of one of the

two, not insignificant, toilet/shower buildings proposed which would enclose the third side of the courtyard. The three buildings, together with the widespread hardsurfacing about them and across the site in the form of caravan hardstandings and access roads, and associated development such as the swimming pool, volleyball courts and football pitch, would give an impression of permanence which would remain even if the Appellant were to remove the caravans for 4 months of the year as suggested. Even without the caravans the character would still be that of a caravan site wholly at odds with its farmland setting, albeit that it would be vacant. [4.18, 5.20,]

- 9.25 Looking from public vantage points, there are few places close to the site where the development on the field could be said to be unacceptably prominent or visually intrusive. From Brierley Lane the development is well screened by the roadside hedge and partial, fleeting views could be further reduced by reinforcement planting. Looking towards the site from the lane further to the west, more of the development is seen because of the gappy nature of the western field boundary but again screening on this boundary could be improved by additional planting. From within the farm itself, footpath 87 to the south of the site currently affords at least one view towards the development, although this is currently dominated by the polytunnels in the foreground. However, with the polythene from the tunnels removed during winter months and during periods when the polytunnels are removed, the caravan site would present an inappropriate intrusion in the rural scene when viewed from this path. [4.2, 5.21-5.22, 5.24]
- 9.26 The fact that a development might not be easily seen is no argument in favour of inappropriate forms of development in the countryside as it could be used to justify all manner of unacceptable development that is out of character with its rural setting. In this case, public close up views of the site are limited and the site is also not a prominent feature in long distance views across the Arrow Valley due to its low lying nature and topography. The situation is different, however, in views from the middle distance. A walk from the hamlet of Brierley rises in a northerly direction entering Brierley Wood and continuing in a westerly direction to Ivington Camp. From Ivington Camp there is a descent in a northerly direction leading back into the Arrow Valley to the west of Brierley Court Farm. This route is generally on land much higher than the appeal sites and I found a good number of vantage points with clear views of the caravan site. More might be expected in winter when the trees are not in leaf.
- 9.27 From these viewpoints, looking down on the field, the formal layout of the site is readily appreciated and it seems to me that it would be even with the caravans removed as the line of the access roads and rows of hardstanding would still be seen along with the permanent buildings. Notwithstanding the context within which the site is seen which includes a large area of polytunnels, the unattractive distinction between the formal urbanised layout of the caravan site and the informality of the surrounding farmland is striking and, to my mind, unacceptably damages the fine and extensive views available across the Arrow Valley.
- 9.28 These viewpoints are located within the AGLV and on the steep, northern approach to Ivington Camp, but it is the view out from those locations that is affected rather than the view towards them. Looking from the north towards the AGLV and the Camp the caravan site is not prominent as it is low lying. Thus, whilst the caravan site has an unacceptably damaging effect on the quality of the landscape in views across the Arrow Valley in a northerly direction, I consider that it does not affect the landscape quality of the AGLV or

the setting of Ivington Camp to a significant degree. I therefore find conflict with the policies of the development plan and emerging UDP that are concerned with protecting the landscape of the area and in particular with Local Plan policy A.9 and UDP policy LA2. [4.23, 5.23, 5.25, 6.19, 6.20]

- 9.29 There are other matters that should be taken into account in considering the effect of the development on the character and appearance of the area. The site is located along a rural lane well away from any other buildings. No matter how well managed, the introduction of such a large caravan site would inevitably introduce a level of activity and noise from the inhabitants when on the site itself and from their comings and goings that would intrude upon the peaceful nature of the location, harming the tranquillity of the countryside. On the day of my visit, I saw a good number of buses around the middle part of the day returning people to the site who had been working at a remote location. In addition, lighting, no matter how low level, across an area of more than 8ha would unacceptably intrude after dark in a location hitherto unlit which would harm the night time character of the rural area. [4.25, 6.21, 6.22]
- 9.30 Whether one is considering only the deemed application for the amenity building (notice 1) or the totality of the development, excluding the sewage works (appeal B) my conclusion on this issue is that the developments result in serious damage to both the character and the appearance of the rural area.

Need

- 9.31 The Appellant's case of need has been based on the need for the operational development to support a "permitted" caravan site rather than on the need for the caravan site itself and the need for it to be located where it is. Nonetheless, it is clear that the Appellant relies upon a very large temporary workforce, the size of which peaks from mid May to mid July and that this year the number peaked at 3,150 with 1,800 accommodated at Brierley Court Farm in 402 units of accommodation. This already exceeds the number of caravans applied for and reflects the expanding nature of the Appellant's operation with two further growing areas introduced this year. [2.8, 2.14, 4.12, 4.13, 5.18]
- 9.32 It is unclear whether the accommodation at Brierley Court was initially intended to serve only the needs of that farm but it is accepted that that is not the case now. Workers housed at the two accommodation sites at Brierley and Marden are sent to work at any of the Appellant's sites as the needs of the business dictate. Additional sites for strawberry growing are actively being sought and the operation at Brierley is likely to be much reduced during that period when the existing polytunnels are removed. Thus an argument that it is essential for the accommodation to be located at Brierley cannot be sustained, as is demonstrated by the sites at Wickton and Wharton which operate without on-site accommodation; the farming operation at Wickton being not dissimilar in scale to Brierley. [4.14, 6.17]
- 9.33 The evidence suggests that on the acquisition of Brierley Court Farm, a need for further accommodation for workers was identified. The appeal site was chosen because of its distance from the hamlet of Brierley and other residential properties so as to minimise the effects on neighbouring residents. However laudable that, in itself, might be, it does not warrant a substantial development on an isolated greenfield site in the countryside which also results in the loss of a sizeable area of the best and most versatile agricultural land. The site is not served by any local facilities and neither is it situated within reasonable

distance of any public transport service. The suggestion that the location on the farm reduces the need to travel is not borne out by the fact that the workers are there to serve any of the Appellant's farms in the area. [2.4, 4.25, 4.27]

- 9.34 The advantages to the Appellant are apparent in that the site is secure and self contained. Considerable money has been expended in providing infrastructure such as the sewage treatment plant, a road to directly link the site to the main road network, connections for water, electricity etc, and the supporting facilities provided in the amenity building. However, that expenditure does not make the site any more acceptable from a locational point of view and that money might equally have been spent on a more suitably located site. The provision of an on-site shop, recreational facilities and the use of private buses for transport to work and for occasional social outings help to self contain the site and I recognise the benefits of that in maintaining influence over the behaviour of the inhabitants. These might similarly have been provided on a more suitable alternative site and in this respect I note that the Appellant's existing residential site at Marden is located on the outskirts of a village offering some local facilities and with access to a bus service. [4.25, 4.26, 5.17, 5.27, 6.16]

- 9.35 I do not find the functional and financial tests set out in Annex A to PPS7 to have particular relevance to these appeals. The Appellant's operation is patently a thriving and expanding business which is labour intensive at certain times of the year. It clearly requires a large temporary workforce which needs to be accommodated within a reasonable distance of the farmed areas. The problem is what form that should take and where it should be. I fully recognise that in this rural area, the opportunities to house such a large number of people must be limited, but no evidence has been presented to show that the Appellant has made any serious, reasonable or realistic attempt to examine any alternatives with a view to finding a balanced solution which might better fit with planning policy and also satisfy his own requirements. [4.15, 5.14-5.15, 5.17, 6.17]

- 9.36 On the evidence put before me, I conclude that there is a need for accommodation to house the Appellant's temporary workforce within a reasonable distance of the strawberry growing sites and that that requirement peaks between mid May and mid July. Whilst recognising that that presents a problem not easily solved, in the absence of any search to identify whether any more suitable alternative solutions might be found I find no justification for locating the appeal developments on the isolated greenfield site at Brierley Court Farm. Without special justification, there is no reason to allow development that seriously damages the character and appearance of the countryside, including harm to the quality of its landscape, and conflicts with a range of planning policies concerned with protecting the countryside and quality agricultural land from unnecessary development and with achieving sustainable patterns of development.

Other matters

- 9.37 I have considered the Appellant's fall back argument which relies upon Part 5 of Schedule 2 to the GPDO. I have already expressed my view that in order to exercise those permitted development rights the existing use would have to cease and the agricultural use be reinstated. That aside, the Appellant's case on the need for the operational development in these appeals is that it is required for the welfare and well being of the workers. Whilst the Council argues that not all of it is essential, it seems to me that had the use of the site as a caravan site for some 300 units been acceptable the amount of

operational development would be reasonably required to support that use. That being so, there must be some doubt that the Appellant would operate such a large caravan site without the supporting infrastructure and other facilities, as without it, on the Appellant's argument, the welfare and well being of the workforce would not be properly catered for. However, even if I am wrong in this matter, a permitted site under Part 5 would require return to agricultural use out of the particular season and thus the harm would be limited to certain times of the year. I do not consider that a permanent caravan site is justified on the grounds of what might be done as permitted development. [2.15, 4.8, 4.14, 4.16, 4.25, 5.8, 5.16, 6.13]

- 9.38 Concerns expressed by AVRA and others about the impact on tourism and the effect on soil quality are more concerned with the polytunnel farming operation than the appeal proposals and I, therefore, make no comment on them. [4.29, 6.23, 6.24, 7.3, 7.4]
- 9.39 No weight should be given to the suggestion that the amenity building could be reused as a community facility for local residents in the event that the caravan site use ceased. The location, well outside any of the nearby settlements and far from any public transport service, renders the site equally unsuitable for community buildings/uses. [4.30, 5.28]
- 9.40 The Appellant's willingness to accept a temporary permission for a period of 5 years does not, to my mind, indicate that the accommodation will no longer be required at the end of that period. The Appellant's operation is set to expand rather than to cease. It would be wasteful indeed to require the Appellant to seek an alternative site at the end of that period rather than to renew permission on a site where considerable investment had been made on supporting structures and facilities of a permanent nature. If these appeals were to be allowed it would be difficult to resist an application to renew the permissions 5 years hence having initially accepted them. Moreover, having regard to my findings on the main issues I consider that permission should not be granted even for a temporary period. [2.10]
- 9.41 Whilst the caravan site currently accommodates 402 caravans and pods, the Appellant does not seek permission for any more than the 300 hardstandings applied for. That does not mean to say that it is the Appellant's intention to stick to that number of units. The indication given at the inquiry was that there would be no upper limit to caravan numbers that might be brought onto the site in the exercise of Part 5 permitted development rights. [4.1, 8.10]

Conclusion on the planning considerations

- 9.42 The amenity building (notice 1) and the caravan site and associated development (appeal B) harm the character and appearance of the countryside and the landscape quality of the area. Insufficient evidence of need for the developments on the appeal sites has been presented to outweigh that harm or to justify isolated development in the countryside contrary to the locational strategy for the area and to sustainability objectives. I conclude those appeals should be dismissed along with accompanying appeals relating to the sewage treatment plant (notice 2 and appeal A).
- 9.43 Should the First Secretary of State disagree, then suggested conditions and my comments in relation to them can be found at Annex A to this report.

10. RECOMMENDATION

Notice 1:

10.1 I recommend that the notice be corrected by:

- (a) the substitution of the plan annexed to this report for the plan attached to the enforcement notice;
- (b) the deletion from paragraph 2 of the words “edged red on the attached plan numbered 2 (OS reference number 48725625)” and the substitution therefor of the words “edged black on the attached plan”; and
- (c) the deletion of requirement (i) of paragraph 5 of the notice and the substitution therefor of the words “Totally remove the single storey building, hardstanding and all associated connections (including in each case all associated works and equipment) without causing additional harm to the agricultural quality of, and without causing harm to any archaeological remains on, the land to which this notice relates.”

Subject to these corrections, I recommend that the appeal be dismissed, that the enforcement notice be upheld as corrected, and that planning permission be refused on the application deemed to have been made under section 177(5) of the Town and Country Planning Act 1990 as amended.

Notice 2:

10.2 I recommend that the notice be corrected by:

- (a) The deletion of requirement (i) of paragraph 5 of the notice and the substitution therefor of the words “Totally remove the sewage treatment plant, the pumping station, the hardstanding and all associated connections (including in each case all associated works and equipment) without causing additional harm to the agricultural quality of, and without causing harm to any archaeological remains on, the land to which this notice relates.”

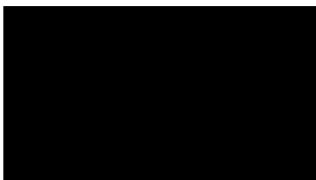
Subject to this correction, I recommend that the appeal be dismissed, that the enforcement notice be upheld as corrected, and that planning permission be refused on the application deemed to have been made under section 177(5) of the Town and Country Planning Act 1990 as amended.

Appeal A:

10.3 I recommend that the appeal be dismissed.

Appeal B:

10.4 I recommend that the appeal be dismissed.



INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr H Wolton QC	instructed by Hallmarks Solicitors, 4 & 5 Sansome Place, Worcester WR1 1UQ
He called	
Mr M J Leay BA(Hons) MSc MRAC FRICS VPLI MIEEM	CPM Environmental Planning and Design Limited, Akeman Barns, Coln St Aldwyns, Cirencester, Gloucestershire GL7 5AW
Mr J Whittaker MA DipTP MRTPI	White Young and Green Planning, Ropemaker Court, 12 Lower Park Row, Bristol BS1 5BN

FOR THE LOCAL PLANNING AUTHORITY:

Mr T Jones	of Counsel, instructed by Ms M Rosenthol, County Secretary and Solicitor
He called	
Mrs J Patton DipLA MLI	Team Leader for landscape and biodiversity matters in the Conservation Section of the Planning Services Department within the Environment Directorate
Mr B Davies BSc(Agric) DipLE MRICS FAAV, MBIAC	Davies and Company, Victoria House, 31-33 Victoria Street, Kettering, Northamptonshire NN16 0BU
Mr P G Horridge BSc(Hons) DipTP FRICS MRTPI	Stansgate Planning Consultants, Conrad House, Birmingham Road, Stratford upon Avon CV37 0AA

FOR THE ARROW VALLEY RESIDENTS' ASSOCIATION (AVRA):

Mr S Head	of Counsel, instructed by DPDS, Trym Lodge, 1 Henbury Road, Westbury-on-Trym, Bristol BS9 3HQ
He called	
Mr D A McCallum BA(Hons) MPhil MRTPI	DPDS Consulting Group, Trym Lodge, 1 Henbury Road, Westbury-on-Trym, Bristol BS9 3HQ

INTERESTED PERSONS:

Mr M Baines RIBA	On behalf of the Leominster Civic Trust, c/o Westbury House, Ryelands Road, Leominster HR6 8NZ
------------------	--

DOCUMENTS

General pre-inquiry documents

Document	1	Notes of the Pre-inquiry meeting and attachments
Document	2	Letters of notification of the appeals and lists of persons notified
Document	3	Letters of representation
Document	4	Letter dated 24 November 2004 from the Council
Document	5	Appeal questionnaire APP/W1850/A/04/1158013 & 1158014
Document	6	Appeal questionnaires APP/W1850/C/04/1159320, 1159321 & 1159322

Document 7 Pre-inquiry Statements of Case

General inquiry documents

Document 8 List of persons present at the inquiry

Document 9 Statement of Common Ground

Document 10 Core Documents numbered 1 – 29

Document 11 First Draft of suggested planning conditions

Document 12 Final Draft of suggested planning conditions

Document 13 Suggested archaeological condition

Documents submitted for the Appellant

Document SA1 Proof of evidence of Mr Whittaker with appendices JDW1-4

Document SA2 Proof of evidence of Mr Leay with appendices CPM1-8 and photographs 1-19 and plans CPM1-5

Document SA3 Note from leading Counsel dated 17 June 2005

Document SA4 Accommodation figures 2004 and 2005

Document SA5 Letter dated 1 November 2004 from Herefordshire Council

Document SA6 Council's Cabinet Decision of 14 October 2004

Document SA7 Minutes of the Council's Environment Scrutiny Committee Meeting 23 June 2004

Document SA8 DEFRA – Final Project Report: Horticultural Technology into Profits

Document SA9 UK Soft Fruit Market Report

Document SA10 Report to Environmental Scrutiny Committee meeting of 23 June 2004 – Review of Poly tunnel Code of Practice

Document SA11 Plan CPM6 – current layout of appeal site

Document SA12 Soil Report for Marden

Document SA13 Herefordshire FWAG Hedge Management Plan

Document SA14 Plan analysing views of amenity building within 1.75km of the site

Document SA15 Extracts from Schedule 2 to the GPDO and Schedule 1 of the Caravan Sites and Control of Development Act 1960

Document SA16 List of documents requested from the Council

Document SA17 Report to Council's Cabinet on 14 October 2004 regarding the Poly tunnel Code of Practice

Document SA18 Minutes of Special Northern Area Planning Sub-Committee 12 May 2004

Document SA19 Final Submissions with accompanying documents

Documents submitted for the Council

Document LA1 Proof of evidence of Mrs Patton with figures 1-7 and photographs A-R

Document LA2 Proof of evidence of Mr Davies with appendices 1-3

Document LA3 Proof of evidence of Mr Horridge with appendices 1-7

Document LA4 Opening Statement

Document LA5 Note from Counsel following Inspector's request for a discussion

Document LA6 Note setting out the Council's position in relation to the Poly tunnel Code of Practice

Document LA7 Closing Statement with accompanying documents

Documents submitted for AVRA

Document AVRA1 Proof of evidence of Mr McCallum with photographs 1-29, plans DM1-4 and appendices DM3-9

Document AVRA2 Written statement and appendices I-V of Mr Whalley

Document AVRA3 Opening submission

Document AVRA4 Appeal decision APP/P2365/C/02/1096123

Document AVRA5 HC Judgement - Vale of White Horse DC v Mirmalek-Sani & Anor (1993)

Document AVRA6 Extract from Herefordshire Times 7 July 2005

Document AVRA7 Photographs 12 April 2004

Document AVRA8 Series of e-mails

Document AVRA9 Introduction to AVRA

Document AVRA10 Closing Submission with accompanying documents

Documents submitted by interested persons

Document IP1 Submission from Brierley Residents' Group

Document IP2 Letter dated 13 April 2004 from Leominster Civic Trust

Document IP3 Note from Leominster Civic Trust with two attached photographs

Document IP4 Note from Mr H M Morgan dated 14 July 2005 to Leominster Civic Trust

PLANS

Application drawings Appeal A (document 10 – CD15)

Plan	A	1972/001/0102 rev SK1	Proposed Access Road Layout (Site Location Plan)
Plan	B	1972/001/0200 rev D	Caravan Accommodation Foul Drainage Layout
Plan	C	1972/001/0212 rev A	Caravan Accommodation Foul Treatment Plans and Sections

Application drawings Appeal B (document 10 – CD3)

Plan	D	1972/001/0102 rev SK1	Proposed Access Road Layout (Site Location Plan)
Plan	E	03515/02 rev A	Proposed Plan of Amenity Building
Plan	F	03515/03 rev A	Proposed Elevations of Amenity Building
Plan	G	03525/04 rev A	Landscape Drawing
Plan	H	03525/05	Drainage Plan
Plan	I	03515/15	Toilet Block

ANNEX A - CONDITIONS

1. Should the First Secretary of State disagree with my recommendations and decide to grant planning permission then set out below are conditions recommended for each of the planning applications and deemed planning applications. In relation to appeal B the conditions are based on my view that permission would be granted for the use of the caravan site as well as for the operational development. Were the use to be excluded, then I would question the reasonableness and relevance of some of the conditions to the operational development permitted, for example condition number 4 restricting amplified sound. The list takes into account the discussion on conditions set out at section 8 of my report and I make the following additional comments.
2. In relation to condition 4, I have not included an “exceptions” phrase to the restriction of amplified sound outside certain hours as this isolated countryside site is not a suitable location for late night entertainment.
3. Suggested conditions 7 – 13 all require further details to be submitted within a 28 day time period and implemented within a further 28 days from the date of approval. The wording suggested could make the conditions difficult to enforce since it does not take away the planning permission granted in the event that the particular condition is not complied with and it does not cover all eventualities, for example if the details submitted were to be refused. A more complex condition might be used requiring the use to cease and the operational development to be removed in the event that a timetable covering submission of the details, decision by the Council, submission of appeal and determination of such an appeal (were that to be necessary), and implementation of the approved details were not complied with. However, having regard to the substantial amount of the development that still has to be implemented which includes finishing the amenity building, constructing the two toilet/washroom buildings and laying out all the caravan hardstandings, I consider that it would be sufficient to impose conditions preventing any further development from being undertaken until the necessary details had been submitted and approved, and requiring the development to be carried out in accordance with those approved details.
4. Suggested condition 14 which would limit the permission to 5 years seems to me to be unreasonable, despite acceptance by the Appellant. Extensive works are proposed of a permanent nature and the accommodation is required to support a thriving business so that the need for the accommodation would still be there in 5 years time. With the amount of investment expended on this site it seems likely that there would be an application to renew the permission and, having accepted the development for 5 years, such an application would be difficult to resist. Condition 1 limiting occupation to persons employed in the Appellant’s operation would ensure that the site would not remain if the business were to cease. I recommend that no temporary condition be included.
5. An upper limit on the number of caravans brought onto the site should be included but having regard to the logistics, I do not think it would be reasonable to require them to be removed for 4 months each year. It is also unnecessary to require vacation during the winter months as condition 1 restricts occupation to the Appellant’s employees. The visual impact of the caravans could be influenced to a degree by a condition controlling their finished colour. A condition preventing organised events on the site would not be sufficiently precise so as to be enforceable.

SUGGESTED CONDITIONS

Appeal B – APP/W1850/A/04/1158014

- 1) The occupation of the caravans that are located upon the development hereby permitted shall be limited to persons wholly employed in agriculture in the Appellant's strawberry production operation.
- 2) No further work shall take place on the amenity building or toilet buildings hereby approved until details or samples of materials to be used externally on walls and roofs have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 3) The developer shall afford access at all reasonable times to any archaeologist nominated by the local planning authority, and shall allow him/her to observe the excavations and record items of interest and finds. A minimum of 5 days written notice of the commencement date of any further works forming part of the development shall be given in writing to the County Archaeology Service.
- 4) No amplified music or sound or any other music shall be played in the open areas of the site or within the amenity building outside the hours of 1000 to 2230 on weekdays and Sundays and outside the hours of 1000 to 2300 on Saturdays.
- 5) No external lighting shall be installed on the site other than in accordance with a scheme, the details of which shall previously have been submitted to and approved in writing by the local planning authority. Thereafter, the external lighting shall not be operated other than in accordance with the scheme approved.
- 6) No further development shall take place until details of junction and visibility improvements at the junction of the site access road with the unclassified highway 93600 (Brierley Lane) and details of any access gates at that junction have been submitted to and approved in writing by the local planning authority. The works shall be constructed as part of the development hereby approved and in accordance with the approved details and shall thereafter be retained in accordance with the details so approved.
- 7) No further development shall take place until a scheme for the parking, loading, unloading and turning of vehicles within the site has been submitted to and approved in writing by the local planning authority. The scheme shall provide for an area to be laid out, consolidated, surfaced and drained and spaces marked on the ground for the parking of 20 cars and for the loading and unloading of commercial vehicles, and shall provide for cars and commercial vehicles to turn so that they may enter and leave the site in a forward gear. The works shall be constructed as part of the development hereby approved and in accordance with the approved details and shall thereafter be retained and kept available for use in accordance with the details so approved.
- 8) No further development shall take place until the following have been submitted to and approved in writing by the local planning authority:
 - a) engineering details and specifications of on-site roads and drains;
 - b) details of wheel cleaning apparatus including siting;
 - c) a scheme for the provision of secure bicycle parking on site for a minimum of 50 bicycles;
 - d) details of a Green Travel Plan and arrangements for its operation as part of the overall management of the site; and

- e) a scheme for the provision of surface water drainage works.
Development shall be carried out in accordance with the approved details which shall thereafter be retained on site/in operation in accordance with the details so approved.
- 9) No further development shall take place until full details of both hard and soft landscape works have been submitted to and approved in writing by the local planning authority and these works shall be carried out as approved. These details shall include enclosure and screening subject to the findings of an agreed visual impact assessment; car parking layouts; other vehicle and pedestrian access and circulation areas; hard surfacing materials; minor artefacts and structures; proposed and existing functional services above and below ground.
- 10) Soft landscape works shall include planting plans at 1:500 or 1:200 scale; written specifications (including cultivation); schedules of plants, noting species, plant sizes and proposed numbers/densities; an implementation programme; details of all existing trees and hedgerows with their location, species, size, condition, any proposed tree surgery and an indication of which are to be retained and which are to be removed; details and positioning of any protective fencing and the extent of tree protection zones.
- 11) All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding season following their approval. If within a period of 5 years from the date of planting of any tree or plant, that tree or plant, or any tree or plant planted in replacement for it, is removed, uprooted or destroyed or dies or becomes in the opinion of the local planning authority seriously damaged or defective, another tree or plant of the same species and size as that originally planted shall be planted at the same place, unless the local planning authority gives its written consent to any variation.
- 12) No further development shall take place until a schedule of landscape maintenance for a minimum period of 5 years has been submitted to and approved in writing by the local planning authority. The schedule shall include details of the arrangements for its implementation. Development shall be carried out in accordance with the approved schedule.
- 13) Notwithstanding the details shown on the approved drawings, no further development shall take place until a revised scheme for the layout of caravans, other moveable structures and hardstandings has been submitted to and approved in writing by the local planning authority. The caravans, other moveable structures and hardstandings shall be located in accordance with the approved scheme.
- 14) No more than 300 caravans shall be stationed on the land at any time.
- 15) No caravan stationed on the site shall be finished other than in a colour taken from a list of colours which shall have been previously submitted to and approved in writing by the local planning authority.

Appeal A – APP/W1850/A/04/1158013

- 1) The sewage treatment plant shall be removed and the land fully restored to agricultural use upon the adjoining caravan site being connected to the main sewage treatment plant at Leominster, in accordance with a timetable to be submitted to and approved in writing by the local planning authority.

Notice 1 – APP/W1850/C/04/1159320

- 1) No further work shall take place on the building hereby approved until details or samples of materials to be used externally on walls and roof have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 2) No further development shall take place until a scheme for the parking, loading, unloading and turning of vehicles within the site has been submitted to and approved in writing by the local planning authority. The scheme shall provide for an area to be laid out, consolidated, surfaced and drained and spaces marked on the ground for the parking of 20 cars and for the loading and unloading of commercial vehicles, and shall provide for cars and commercial vehicles to turn so that they may enter and leave the site in a forward gear. The works shall be constructed as part of the development hereby approved and in accordance with the approved details and shall thereafter be retained and kept available for use in accordance with the details so approved.
- 3) No amplified music or sound or any other music shall be played within the amenity building outside the hours of 1000 to 2230 on weekdays and Sundays and outside the hours of 1000 to 2300 on Saturdays.
- 4) No further development shall take place until full details of both hard and soft landscape works have been submitted to and approved in writing by the local planning authority and these works shall be carried out as approved. These details shall include enclosure and screening subject to the findings of an agreed visual impact assessment; car parking layouts; other vehicle and pedestrian access and circulation areas; hard surfacing materials; minor artefacts and structures; proposed and existing functional services above and below ground.
- 5) Soft landscape works shall include planting plans at 1:500 or 1:200 scale; written specifications (including cultivation); schedules of plants, noting species, plant sizes and proposed numbers/densities; an implementation programme; details of all existing trees and hedgerows with their location, species, size, condition, any proposed tree surgery and an indication of which are to be retained and which are to be removed; details and positioning of any protective fencing and the extent of tree protection zones.
- 6) All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding season following their approval. If within a period of 5 years from the date of planting of any tree or plant, that tree or plant, or any tree or plant planted in replacement for it, is removed, uprooted or destroyed or dies or becomes in the opinion of the local planning authority seriously damaged or defective, another tree or plant of the same species and size as that originally planted shall be planted at the same place, unless the local planning authority gives its written consent to any variation.
- 7) No further development shall take place until a schedule of landscape maintenance for a minimum period of 5 years has been submitted to and approved in writing by the local planning authority. The schedule shall include details of the arrangements for its implementation. Development shall be carried out in accordance with the approved schedule.

Notice 2 – APP/W1850/C/04/1159321

- 1) The sewage treatment plant shall be removed and the land fully restored to agricultural use upon the adjoining caravan site being connected to the main sewage treatment plant at Leominster, in accordance with a timetable to be submitted to and approved in writing by the local planning authority.