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IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
THE ADMINISTRATIVE COURT

Royal Courts of Justice
Strand
London WC2

Friday, 15th December 2006

B E F O R E:

MR JUSTICE SULLIVAN

THE QUEEN ON THE APPLICATION OF HALL HUNTER PARTNERSHIP

(CLAIMANT)

-v-

(1) FIRST SECRETARY OF STATE

(2) WAVERLEY BOROUGH COUNCIL

(3) TUESLEY FARM CAMPAIGN/RESIDENTS GROUP

(DEFENDANTS)

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MR TIMOTHY STRAKER QC AND MR GARRETT BYRNE (instructed by Messrs
Clifton Ingram) appeared on behalf of the CLAIMANT

MR PAUL BROWN (instructed by the Treasury Solicitor) appeared on behalf of the 1st
DEFENDANT

MR CHRISTOPHER KATOWSKI QC and MS ALISON OAKES (instructed by
Waverley Borough Council) appeared on behalf of the 2ND DEFENDANT

MR GUY WILLIAMS (instructed by the Tuesley Residents Group) appeared on behalf of
the 3RD DEFENDANT

J U D G M E N T

1. MR JUSTICE SULLIVAN: Introduction
2. This is an appeal under section 289 of the Town and Country Planning Act 1990 ("the Act") against decisions by an Inspector appointed by the first defendant dismissing two appeals by the claimant under section 174 of the Act against two enforcement notices issued by the second defendant on 29th July 2004. The Inspector's decisions are contained in a decision letter dated 15th December 2005. Both of the enforcement notices related to land at Tuesley Farm, Tuesley Lane, which lies near Milford, and to the south of the southernmost extent of the built-up parts of Godalming ("the farm").

Factual Background

3. The farm is in the Green Belt and most of the appeal site is in an Area of Great Landscape Value ("AGLV"). The Surrey Hills Area of Outstanding Natural Beauty ("AONB") abuts the south-eastern boundary of the appeal site. The claimant purchased the farm in July 2003 with the intention of using it for growing soft fruit. Production began in 2004 and continues. In order to facilitate the growth of the soft fruit, the claimant erected polytunnels which the Inspector said were aptly described by one manufacturer as "large walk-in plastic tunnels" (paragraph 22) (References in parenthesis are to the paragraph numbers in the Inspector's decision letter).
4. In 2004 some 45.6ha of the farm was covered with polytunnels with a maximum coverage at any one time of 28.84ha. In 2004 the last of the tunnels was dismantled and removed in November (paragraph 27). In 2005 the first polytunnels were erected in February, the month in which the inquiry into the appeals opened before the Inspector. He inspected the farm in May and August 2005 and the inquiry concluded, having sat for 11 days in total, on 7th October 2005. In 2005 the cumulative total coverage of polytunnels was 60.8ha, with a peak coverage of 39ha at any one time (paragraph 28).
5. The claimant owns other farms in Surrey and Berkshire which are used for growing soft fruit. In addition some "break crops" are grown. The claimant employs 50 permanent staff and 650 summer harvest staff. Some 230 seasonal workers were accommodated in 45 caravans at the farm. Each caravan had a fitted bathroom and water, electricity and propane gas supply, with sewage disposal being linked to the farm's main drainage system (paragraph 21). The breach of planning control alleged in enforcement notice A was the change in use of the land from agriculture to the stationing of caravans (together with associated operational development) without planning permission. The breach of planning control alleged in enforcement notice B was the erection of polytunnels (and windbreaks, bunds and fencing) without planning permission. The enforcement notices related to the whole of the farm and the second defendant's reasons for issuing notice B stated that:

"Approximately 40 hectares (99 acres) of polytunnels have been erected."

6. The Inspector dismissed both appeals and upheld the enforcement notices with corrections, subject to an extension of time for compliance from four months to 12 months.

The grounds of challenge

7. On the behalf of the claimant, Mr Straker QC challenged the Inspector's decision on four grounds. (1) The Inspector erred in concluding that the polytunnels were "development" within the meaning of section 55(1) of the Act. (2) If the polytunnels were development, the Inspector erred in concluding that they were not permitted development within Class A in Part 4 of Schedule 2 to the Town and Country Planning (General Permitted Development) Order 1995 ("the GPDO"). (3) The Inspector erred in concluding that the use of the appeal site for the stationing of caravans to house temporary workers at the farm was not permitted development by virtue of Part 5 of Schedule 2 to the GPDO (the submission made to the Inspector that stationing the caravans fell within Part 4 of Schedule 2 to the GPDO was not pursued before me). (4) The Inspector erred in a number of respects when concluding that planning permission should be refused for the polytunnels and the caravans.
8. I will examine these grounds in turn.

Ground 1

9. The Inspector described the polytunnels, which were first used in the United Kingdom in 1993, as follows, in paragraphs 23-25 of the decision letter:

"23. Essentially, they comprise a web of metal legs and hoops over which a plastic covering (described by some as polythene sheeting) is stretched and anchored with ropes. The metal legs are tubes, typically between 1.5m and 2.0m in length, with a screw-end to enable it to be wound into the ground and a 'Y'-shaped uppermost portion into which the hoops are slotted; thus, a single 'y'-shaped leg provides the support for the hoops of adjoining tunnels and linked blocks of tunnels several bays wide can be formed in this way.

24. Machinery is utilised to screw the legs into the ground between 0.6m and 1.0m in depth. Hoops are delivered in straight lengths and are bent into an arc on site by machine during the course of erection; diagonal and horizontal bracing bars are clamped to the legs and hoops of the first and some second bays. The main parties are agreed that the height of the tunnels, as formed, would vary, depending on the crop: 3.2m for strawberries and 3.7m for raspberries; generally, the maximum height would be up to 4m. The tunnels can vary in width between 6.5m and 8.0m and vary in length between 50m and 400m.

25. Mr M A Hall estimates that it takes 45 man-hours to fully-erect one acre and 32 man-hours to dismantle the same; in answer to my question, he indicated that teams of ten are engaged in these erection and dismantling processes."

10. Having set out the hectares covered by the polytunnels in 2004 and 2005 (see paragraph 4 above), the Inspector said in paragraphs 29 and 30:

29. Hence, in essence, polytunnels are erected on a greater or lesser number of blocks around the farm for nine months of the year; they cover different crops, at different times, for different periods. Thus, between any given times of the year, the particular extent of the farm covered in this way fluctuates.

30. However, on day 10 of the inquiry, in cross-examination, Mr H Hall indicated that in 2006, he anticipated between 34ha and 45ha would be covered at any one time, but he was unable to state the anticipated cumulative total. Nor was he willing to commit the appellant in 2006 and beyond in 2007 to the same hectareage covered in 2005 because the extent to which land would be utilised in this way would be directed by market-led forces."

11. The Inspector said in paragraph 31 of the decision letter that all the parties had founded their cases on the areas covered by polytunnels in 2005. Against this factual background, the Inspector considered the claimant's appeal against enforcement notice B on ground (c) in section 174(2) of the Act: viz, that there was no breach of planning control because the polytunnels did not amount to development (ground 1 in this appeal); alternatively they were permitted development (ground 2 in this appeal).
12. For the purpose of considering ground 1, it is unnecessary to either set out the statutory framework or to list the relevant authorities because Mr Straker accepted that the Inspector's "self direction" in paragraphs 35 to 40 of the decision letter as to the legal principles to be applied could not be faulted. Under the heading "Whether 'Development'", the Inspector said:

"35. Section 57 of the 1990 Act (as amended) indicates that '*planning permission*' is required for the carrying out of '*development*' of '*land*'. By s.336(1), '*land*' includes a '*building*', the definition of which '*... includes any structure or erection...*' The 1990 Act (as amended) contains no further definition of '*structure*' and the term would need to be given its ordinary meaning; '*erection*' (in relation to '*buildings*') includes extension, alteration and re-erection. By s.171A(1)(a), the carrying out of '*development*' without the required '*planning permission*' constitutes a breach of planning control.

36. Section 55(1) defines '*development*', for the purposes of the 1990 Act (as amended), as meaning '*... the carrying out of building, engineering, mining or other operations in, on, over or under any land, or the making of any material change in the use of any buildings or other land*'. By s.55(1A), '*... building operations*' includes - (a) demolition of buildings; (b) re-building; (c) structural alterations of or additions to buildings; and (d) other operations normally undertaken by a person carrying on business as a builder'.

37. However, s.55(2) adds that certain operations or uses of land shall not be taken for the purposes of the 1990 Act (as amended) to involve

development of land including '... (e) the use of any land for the purposes of agriculture or forestry ... and the use for any of those purposes of any building occupied together with land so used;...'. Section 335(a) defines 'agriculture' as including '... horticulture, fruit growing, seed growing ... (and) ... the use of land as ... market gardens and nursery grounds...'.

38. It is common ground between the main parties that Skerrits of Nottingham Ltd v Secretary of State for the Environment, Transport and the Regions and Harrow LBC (No.2) [2000] 2 PLR 102; [2000] JPL 1025; [2000] ECGS 43 provides valuable guidance in the interpretation of the meaning of 'development'. In that case, it was held that whether 'building operations' have occurred involves the application of a legal test.

39. That test is set out in Cardiff Rating Authority and Cardiff Assessment Committee v Guest Keen and Baldwin's Iron and Steel Co.Ltd [1949] 1 KB 385; three factors - size, permanence and degree of physical attachment - were relevant in deciding what was a building or structure. That was a case concerned with rating legislation, but its appropriateness to planning legislation was confirmed in Barvis Ltd v Secretary of State for the Environment [1971] 22 P&CR 710.

40. In Skerrits, Pill LJ approved the approach adopted by Bridge J in Barvis; the approach to the question of whether there had been a building operation was to consider, first, whether there was a building. If there was a building, applying the test set out in Cardiff Rating Authority, then what had created it was a building operation. The Courts have held that all of the circumstances have to be taken into account."

13. In paragraphs 41 to 47, the Inspector summarised, in a manner which was not criticised by Mr Straker, the main points made to him on behalf of the claimant at the hearing. The Inspector then set out his own conclusions in paragraphs 48 to 58:

"48. My view is that, in terms of size, whilst there are limited variations in the height and width of an individual polytunnel, likely governed, in part, by the length and radius of the arc, clearly there is no fixed horizontal length. They are designed to accommodate the extent of the crop that requires to be protected and that, in turn, is regulated, at least in part, by the amount of land available in which the particular crop is grown. They can follow the topography of the ground.

49. The height and width of the polytunnels, together with whatever length an individual polytunnel might be, gives them volume and bulk; the fact that the component parts of one polytunnel are designed such that they can be linked to another, side-by-side, emphasises the solidity of appearance of the network thus formed.

50. The practice at this farm is to erect the polytunnels in such networks

or blocks. Thus, for example, a notice displayed by the appellant in block No.7 indicated that, in that area alone, there were 24 polytunnels comprising a total length of 5,293m and amounting to coverage of 3.9ha. That, in itself, would be an entity of substantial extent. As a varying number of parcels are covered simultaneously, by any standard, the peak coverage of land of 39ha and the cumulative coverage of 60.8ha would be an enormous expanse of ground occupied by polytunnels.

51. It is not the case here that an individual polytunnel is so short in its length that, as a whole, it would be of an inconsequential scale. Applying the appellant's evidence of number of man-hours per-acre needed to erect the polytunnels, the time taken to erect, for example, those in block No.7, would be substantial; contrary to the appellant's belief and notwithstanding the team of persons employed, the task would be neither quick nor simple, serving to illustrate the scale of the work needed to provide the polytunnels.

52. Together, these factors indicate that, at Tuesley Farm, the polytunnels to which the notice is directed are, as a matter of fact and degree, of substantial size and proportion.

53. In respect of the degree of attachment, it might be the case that the screw-ended metal 'Y'-shaped legs are capable of being wound into the ground manually, but here, machines are used, not surprisingly so given the vast number of such legs needed. By this means, the polytunnels are affixed to the ground to a depth of up to 1m. It might be the case that the plastic sheeting and the legs themselves would be susceptible to storm damage, but equally there would be many forms of structures or erections that might also possess such vulnerability. As a matter of fact and degree, the polytunnels have a substantial degree of physical attachment to the ground which enables them to remain in place for whatever term is necessary to serve the purpose for which they are designed.

54. Turning to permanence, bearing in mind the method adopted at Tuesley Farm by which polytunnels are erected and subsequently dismantled and erected elsewhere, it would be the case that polytunnels would remain in one particular location from between three and seven months in any one year. Even the shortest of those periods would be of sufficient length of time to be of consequence in the planning context and more so in respect of longer periods. The provision of an individual polytunnel or a block in any particular area would have a date of commencement and reach a state of completion to perform the function for which it is designed; it might be further extended in the period that it exists, or reduced in size. But there is a finite span of time within which it is present before it is taken away.

55. They can be moved only by being taken-to-pieces, rather than being moved bodily. Once they are dismantled in this way, then bearing in mind

the length of time, expressed by the appellant in man-hours per acre, taken to do so, that would be of sufficient scale, in itself, to amount to demolition and, by definition, a building operation. It may be the case, once dismantled, that there is no physical alteration to the character of the land itself. However, the subsequent erection of polytunnels on another block on the holding, even if the same materials are re-used, would be a separate act, to be considered independently against the question as to whether such act amounted to 'development'.

56. There is no evidence in the present case of the nature of the particular scheme or the factors taken into account by other local planning authorities against which they have made judgments on the question of 'development'. The Council's press release in May 2004 is unfortunate, but it goes on to say that *'(t)he Council is monitoring the situation with the polytunnels at Tuesley Farm to establish the facts in this case...'*. Once it did so, it considered it expedient to issue Notice B and no claim is made that the Council was estopped in so doing. The definition contained in the CRoW Act 2000 is made for the specific purposes of that Act and would carry little weight in the interpretation of the 1990 Act (as amended).

57. Although there are noteworthy differences in the facts of the cases concerned in the appeal decisions in 1999 at New Barn Farm, Old Park Lane, Bosham in Chichester DC, the Inspector in those cases found that the polytunnels constituted operational development rather than a material change of use of the land (refs: T/APP/X/98/L3815/003017/P6; T/APP/L3815/C/98/1010638/P6).

58. The marquee in *Skerrits* was found not be a transient, ephemeral or fleeting - words that the Court believed would provide appropriate contrasts to the words permanence and permanent. Nor would the polytunnels in this case be transient, ephemeral or fleeting. Having regard to all of the circumstances of the present case and as a matter of fact and degree, the provision of polytunnels on land at Tuesley Farm, by reason of their size, permanence and degree of attachment to the land, is not a use of land, but comprises a building operation and hence 'development' within the meaning of the 1990 Act (as amended). The evidence of Mr H Hall would not lead to a different conclusion."

14. The Inspector's assessment of the factual material would appear to be entirely in accord with his, correct, self direction as to the legal principles to be applied. He considered all of the circumstances, and in particular the three factors of size, degree of physical attachment and permanence. As to size he concluded that "the polytunnels to which the notice is directed are, as a matter of fact and degree, of substantial size and proportion" (paragraph 52).
15. Matters of fact and degree are for the Inspector, not the court, to decide, but the Inspector's conclusion is not in the least surprising bearing in mind the dimensions of

the individual tunnels (paragraphs 24 and 51); the fact that in practice linked networks of tunnels were constructed in large blocks so that in one of the 13 blocks which were covered at some stage in 2005 (paragraph 28), block J, there were 24 polytunnels with a coverage of 39.9ha (paragraph 50); and the "enormous expanse of ground occupied by the polytunnels", with a peak coverage of 39ha and a cumulative coverage of 60.8ha in 2005 (paragraph 50).

16. Although Mr Straker submitted that the plastic sheeting was insubstantial and could be equated with laying down plastic sheeting at ground level to suppress weeds and/or encourage crop growth, that is to ignore the factor rightly taken into account by the Inspector, namely the time taken to erect and then to dismantle the polytunnels (see paragraphs 51 and 55).
17. In the Cardiff case, Jenkins J (whose approach was endorsed by Pill LJ in Skerrits (page 1034), said that the words "is or is in the nature of a building or structure" indicated certain characteristics:

"The general range of things in view consists of things built or constructed. I think, in addition to coming within this general range, the things in question must, in relation to the hereditament, answer the description of buildings or structures, or, at all events, be in the nature of buildings or structures. That suggests built or constructed things of substantial size: I think of such size that they either have been in fact, or would normally be, built or constructed on the hereditament as opposed to being brought on to the hereditament ready made. It further suggests some degree of permanence in relation to the hereditament, *i.e.* things which once installed on the hereditament would normally remain *in situ* and would only be removed by a process amounting to pulling down or taking to pieces."

18. The claimant's evidence before the Inspector was that it took teams of ten men 45 man hours to fully erect one acre and 32 man hours to dismantle the same (paragraph 25). Machines were used to screw the legs up to one metre deep into the ground and to bend straight lengths of metal into arcs to create the hoops. Diagonal and bracing bars were clamped to the legs and hoops of the first and some of the second bays in the blocks (paragraph 24). Taking block J (for which dimensions are given in paragraph 50 of the decision letter), Mr Straker accepted that its 3.9ha (or 9.6 acres) would on that basis have taken over 430 hours (or about a week's work for the ten man team, assuming no over time) to erect and over 300 hours for them to dismantle. When I asked him what the ten man team were doing if they were not in ordinary language erecting or constructing something, vis an erection or a structure, I did not receive a satisfactory answer.
19. In view of the fact that machines were used to screw the "vast number of ... legs needed" up to one metre into the ground, it is not surprising that the Inspector concluded "the polytunnels have a substantial degree of physical attachment to the ground". "'Permanence' does not in this context necessarily connote a state of affairs which is to continue forever or indefinitely. It is matter of degree between the

temporary and the everlasting" (see per Morritt LJ at page 1036 of Skerrits). The fact that a large and well constructed structure is capable of being, and is, dismantled and removed annually for a short time is not determinative (see per Pill LJ at page 1035 of Skerrits). If one asks how long must a structure or erection remain *in situ* for there to have been a sufficient degree of permanence, the answer is: "for a sufficient length of time to be of significance in the planning context" (see per Schiemann LJ at page 1034 of Skerrits). The Inspector's finding that the polytunnels "would remain in one particular location from between three and seven months in any one year" (paragraph 54) is not challenged. His conclusion that "even the shortest of those periods of time would be a sufficient length of time to be of consequence in the planning context and more so in respect of the longer periods" cannot be said to be unreasonable.

20. In summary, on the face of the decision letter, there would appear to be no conceivable error of law in the Inspector's approach to the question whether the erection of the polytunnels on the farm amounted to development. Against this somewhat unpromising background, I understood Mr Straker to make the following criticisms of the decision letter. It was said that the Inspector failed to consider "whether the construction of a polytunnel at a farm constituted a building operation [emphasis added]." There was in my judgment no reason why the Inspector should have considered such a hypothetical question. Enforcement notice B was not a question in a University Town Planning Department development control examination, "Do polytunnels constitute development? - Discuss", it was a response to the polytunnels that had been erected at this particular farm, which, according to the reasons given in the notice, covered some 40ha of the farm (this corresponds with the peak coverage of 39ha referred to in the decision letter). The Inspector was not considering polytunnels as an abstract concept but the particular polytunnels at the farm, with their particular dimensions, methods of erection and dismantling, how they were fixed to the ground and how long they remained *in situ*, et cetera.
21. Mr Straker submitted that the Inspector should at least have considered whether the erection of one polytunnel at the farm would amount to a building operation. But enforcement notice B was not concerned with one polytunnel, it was concerned with polytunnels which were designed (the "Y"-shaped leg) to be, and, on the claimant's own evidence, were, constructed in blocks of tunnels several bays wide, covering in the case of block J an area of 3.9ha. Even though there was no appeal under ground (f) in section 174(2) of the Act, the Inspector did consider whether "an individual polytunnel is so short in its length that, as a whole, it would be of an inconsequential scale" and he concluded that it would not (see paragraph 51). Bearing in mind the dimensions of the individual polytunnels (up to maxima of 4m in height, 8m in width and 400m in length, see paragraph 24), that conclusion is not in the least surprising, but it would have been wholly artificial if the Inspector had focused upon one polytunnel given the evidence at the inquiry as to how they were designed to be, and were in practice, constructed in large blocks.
22. Mr Straker submitted that the Inspector should have had regard to the "proper context", namely the fact that the use of the land at the farm for agricultural purposes was exempted from planning control (see section 55(2)(e) of the Act) and that the use of polytunnels was now "the norm" in soft fruit production. I do not see how the fact that

Parliament has exempted the use of land for agricultural purposes from planning control can be of any assistance in deciding whether a particular activity (to use a neutral word) carried on by a farmer amounts to a use of his land for agricultural purposes or operational development for agricultural purposes within section 55(1) of the Act. While the latter is development and does therefore require planning permission, certain operational development for agricultural purposes is permitted development by virtue of the GPDO. Subject to ground 2 (below) it is not suggested that if the erection of polytunnels at the farm was operational development it is permitted within any of the normal agricultural classes in the GPDO. "Agriculture" is widely defined in section 336(1) of the Act, and it may well be "the norm" for farmers to grow certain crops under glass, or to keep certain animals under cover for all or part of the year. The fact that they are "the norm" for this particular type of agriculture (as widely defined by the Act) does not mean that erecting the glass houses or the sheds for the animals will not amount to a building operation. If Parliament is persuaded that changes in agricultural practice mean that certain new types of agricultural building are required, the remedy is to amend the GPDO to permit the erection of such buildings, subject to suitable conditions.

23. In his oral submissions, Mr Straker placed some emphasis on Parkes v Secretary of State for the Environment [1979] 1 All ER 211, and in particular upon certain dicta by Lord Denning MR at page 214. Having referred to the definition of development in section 22 of the Town and Country Planning Act 1971 (which for present purposes does not differ from the definition in section 55(1) of the Act), Lord Denning said:

"Looking at these various sections it seems to me that the first half, 'operations', comprises activities which result in some physical alteration to the land, which has some degree of permanence to the land itself, whereas the second half, 'use', comprises activities which are done in, alongside or on the land but do not interfere with the actual physical characteristics of the land."

Mr Straker submitted that the erection of the polytunnels did not result in any physical alteration to the farm. Once they were removed, the land was in the same condition as it had been before they had been erected.

24. The Parkes case was not concerned with the definition of operational development. The Court of Appeal merely concluded that the storage of scrap and scrap materials on land amounted to a use of land, not operational development, so that a discontinuance order which had been served by the Local Planning Authority was lawful. The Court was not concerned, as was the Court of Appeal in the Skerrits case, with the question whether something which had been erected or constructed on land was a "building" for the purposes of the Act. Mr Straker's approach to the Parkes case would make a nonsense of the Skerrits case. In one sense, placing the Marquee in the Skerrits case in the grounds of the hotel for eight months each year would not have resulted in a "physical alteration" to the land beneath the marquee. But Parkes has to be considered in the light of the subsequent and directly relevant decision of the Court of Appeal in Skerrits. It is not difficult to reconcile the two cases. If the "thing" (to use a neutral phrase) that is placed on the land is sufficiently large, sufficiently attached to the land and

sufficiently permanent as to amount to a "building", then, while it is *in situ*, the character of the land is changed: from that of open land without any building upon it to land upon which a "building" stands.

25. Finally, Mr Straker contended that, since the polytunnels were moved from place to place on the farm, with blocks being dismantled while others were being erected, there was always a "moving feast" and a "moving feast" did not have the necessary quality of permanence to be a building. However, that submission ignores the Inspector's unchallenged conclusion that the blocks remained *in situ* for between three and seven months in any one year (paragraph 53). The Inspector was entitled to conclude that even the shortest of those periods was of consequence in the planning context.
26. It follows that the challenge on ground 1 must fail.

Ground 2

27. I can deal with this ground more briefly. Part 4 of Schedule 2 to the GPDO grants deemed permission for certain "Temporary Buildings and Uses". Class A permits:

"The provision on land of buildings, moveable structures, works, plant or machinery required temporarily in connection with and for the duration of operations being or to be carried out on, in, under or over that land or on land adjoining that land.

A.1 Development is not permitted by Class A if—

(a)...

(b) planning permission is required for those operations but is not granted or deemed to be granted.

A.2 Development is permitted by Class A subject to the conditions that, when the operations have been carried out—

(a) any building, structure, works, plant or machinery permitted by Class A shall be removed, and

(b) any adjoining land on which development permitted by Class A has been carried out shall, as soon as reasonably practicable, be reinstated to its condition before that development was carried out."

Class B permits:

"The use of any land for any purpose for not more than 28 days in total in any calendar year..."

subject to certain conditions which are not material for present purposes.

28. It was submitted before the Inspector, and before me, that since the word "operations" in Class A was not defined, it should be given its ordinary and natural meaning, which would include "farming operations". The Inspector rejected that submission. In my view he was correct to do so. Parkes is authority for the proposition that there is a "pattern that runs through [the] Act": namely the distinction that is drawn between development by the carrying out of operations and development by the making of a material change of use: see per Geoffrey Lane LJ at page 214.

29. Bearing that pattern in mind, one would expect that the words "operations ... carried out on, in, under or over ... land" in Class A were being used as a convenient shorthand for operational development, to be contrasted with "the use of land" referred to in Class B. That was the approach of the Divisional Court in two cases which were concerned with the comparable provision in the Town and Country Planning General Development Order 1950: Sunbury-on-Thames UDC v Mann [1958] 9 P&CR 309, and Brown v Hayes and Harlington UDC [1963] 107 SJ 931. Class IV in the 1950 order permitted "Temporary buildings and uses." In respect of the latter, it was not for present purposes dissimilar from Class B in Part 4 of the GPDO. In respect of the former, it permitted:

"The erection or construction on land in, on, over or under which operations, other than mining operations, are being or about to be carried out in pursuance of planning permission granted or deemed to be granted under Part III of the Act, or on adjoining land, of buildings, works, plant or machinery needed temporarily in connection with those operations, for the period of such operations."

30. The respondent, who had planning permission for the "continued use" of a site as a yard, workshop and stores, put up a temporary building and contended that it was permitted by class IV. Donovan J said at page 312:

"The respondent says, if I understand it, 'The terms of my continued user of the land involve that I shall be carrying out operations. Therefore, those are operations which are permitted and therefore under Class IV of Schedule I of the Order of 1950 I am entitled to put up these temporary buildings.' The answer made on behalf of the appellants is this: 'You simply have permission for the continued use of the land, and the continued use of that land does not involve, within the meaning of the Town and Country Planning Act, 1947, - whatever meaning it might have in ordinary language - operations, because the whole scheme of the Act is to distinguish between use of land and operations in or over land, and that is borne out by the definition of 'use' in section 119 of the Act [see now section 336(1) of the Act].' The definition is in the following terms.

'Use' in relation to land does not include the use of land by the carrying out of any building or other operations buildings thereon.

Therefore, say the appellants, when you were given temporary permission for the continued use of the land it excluded the operation of building and because it excluded that operation you cannot bring yourself within Class

IV of Schedule 1 to the Order because you can do that only if the buildings are needed for permitted operations, and all you have is a permitted use. Therefore, since you cannot bring yourself within Class IV this building which you have erected has been erected without planning permission, and therefore you must pull it down. That is in effect what they said in the enforcement notice, and I think, without elaborating it any further, that that argument is clearly right, and therefore this appeal should be allowed."

Lord Goddard CJ and Hilbery J agreed.

31. That approach to the meaning of the permission confirmed by Class IV in the 1950 order was followed in the Hayes and Harlington case, from which a short extract will suffice:

"Lord Parker CJ said that the Minister had fallen into the mistake of treating Class IV(1) as concerned with the use of land, as opposed to building operations upon land. Class IV(2) related to uses: Class IV(1) related to operations ... Class IV(1) clearly had no application to the use of the site for the parking of vehicles or plant."

32. In my judgment precisely the same principles apply whether one chooses to describe the use of land for storage as "storage operations", for parking as "parking operations" or for agriculture as "agricultural operations". Whatever might be the position in other contexts, in the planning context such activities are a use of land, not operations.
33. Mr Straker sought to distinguish the Sunbury and Hayes and Harlington cases upon the basis of the difference in wording between the 1950 order, which permitted temporary buildings et cetera on land where operations were being carried out in pursuance of a planning permission granted or deemed to be granted, and the GPDO, which permits temporary buildings et cetera where operations are being carried out, but then by Class A1(b) states that such development is not permitted if planning permission is required for those operations but is not granted or deemed to be granted.
34. I do not accept that there is any real difference between saying: "you may erect temporary buildings on land where you are carrying out operations with planning permission", and saying: "you may erect temporary buildings on land where you are carrying out operations, but you may not do so if you have not got planning permission for those operations".
35. In truth, there is no difference in substance between the relevant provisions of the 1950 order and the GDPO, merely a difference in presentation. Moreover, this difference in presentation runs consistently throughout the GPDO, which, taking each class of permitted development in turn, rather than including any conditions in the description of the permitted development itself (as was often the practice in earlier GDOs), first sets out the description of the permitted development and then lists the conditions to which the deemed permission is subject.

36. For the sake of completeness I should add that the Inspector also concluded that, as a matter of fact and degree, the existence of the blocks of polytunnels for up to nine months of the year within the single planning unit of the farm could not reasonably be regarded as "required temporarily" for the purposes the Class A in Part 4. For the reasons set out above under ground 1 he was entitled to reach that conclusion. But even if he was not so entitled the polytunnels were not temporarily required in connection with operations, they were erected in connection with the use of the land for agriculture.
37. It follows that the challenge on ground 2 must also fail.

Ground 3

38. The Inspector set out the relevant provisions of Part 5 of Schedule 2 to the GPDO in paragraphs 78 and 79 of the decision letter:

"78. 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 [Caravans Sites and Control of Development Act 1960]*'.

79. The Caravan Sites and Control of Development Act 1960 (as amended) (the '1960 Act') prohibits the use of land as a caravan site without a '*site licence*', but no such licence is required for such use in the circumstances set out in the First Schedule to the 1960 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 operation*'."

39. The Inspector summarised the practical effect of those provisions in paragraph 80 of the decision letter:

"Taken together, Class A of Part 5 of Schedule 2 to the GPDO and paragraph 7 of the First Schedule to the 1960 Act set out four criteria that all need to be met to attract the permission granted by the GPDO."

Mr Straker accepted that, in order for the caravan site to be permitted development, the claimant had to meet all four criteria.

40. The Inspector said in paragraph 81:

"81. First, there is no dispute that Notice A is directed at the '*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 of Part 5 of Schedule 2.

The Inspector dealt with the second criterion as follows:

"82. 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*'. There is no dispute that in November or by early December 2004, all the caravans were removed from the site and stored elsewhere until they returned in February 2005. However, the infrastructure, comprising the pathways, the drainage, the electrical and water supplies serving the caravans, all remain in place throughout the year.

83. In Ramsey v Secretary of State for the Environment, Transport and the Regions and Suffolk Coastal DC [2002] JPL 1123, it was held that the carrying out of operations on the land may in some cases be relevant on the issue of whether the proposed use was a temporary one, or was instead a permanent change of use of the land; the latter would arise if the operations make it difficult or impossible for the site to revert realistically to its previous normal use, such as agriculture, in between the occasions when the land is used for the new use.

84. The appellant maintains that in the winter period, the land remains available for other uses such as the parking of vehicles associated with the farm and the storage of agricultural equipment, although there is no clear evidence that such use has occurred to a material extent. Whilst it would not be impossible for it to be used for some agricultural purpose such as incidental parking or storage, it is clearly separated from the surrounding land by the earth bund and fencing with access limited to the group of farm buildings and care would be needed in such use to prevent damage to the infrastructure.

85. Realistically, for all intents and purposes, the land remains designed and fitted out for use as a caravan site and is occupied by caravans for a substantial part of any one year. It would not lose the characteristic of a caravan site merely because the caravans are removed for the time being. As a matter of fact and degree, the use as a caravan site would not be discontinued and the scheme would fail the second of the criteria of the GPDO permission."

41. It is difficult to see how this conclusion could be faulted and, unless Mr Straker can point to some error of law, it is fatal to this ground of challenge whatever errors may or may not have been made in respect of the remaining criteria. Mr Straker said that, since the caravans were removed in November/December 2004 and did not return until February 2005, the use of the land as a caravan site had ceased and the fact that the infrastructure remained did not alter that position.

42. It will be noted that there are two separate aspects to the condition in paragraph A1 in Class A of Part 5 of Schedule 2 to the GPDO: the use as a caravan site "shall be discontinued ... and all caravans on the land shall be removed..." (emphasis added). As Mr Brown pointed out on behalf of the first defendant, 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. When the caravans have departed, do they leave behind an agricultural field or do they leave behind an empty caravan site with all the necessary infrastructure, pathways, services et cetera waiting for them to return? The Inspector's conclusion in paragraph 85 was one which was reasonably open to him. It follows that this ground of challenge cannot succeed, but for the sake of completeness I will refer briefly to the other two criteria. The Inspector summarised the third criterion in paragraph 86:

"Third, it is necessary to show that the use as a caravan site of this agricultural land is '... for ... accommodation ... during a particular season.'"

43. He then referred to two authorities, which since they are not in dispute it is unnecessary to cite, which demonstrate that the exemption does not extend to agricultural workers who are employed throughout the year, as opposed to those who are engaged temporarily for purposes such as hop gathering or potato picking. The Inspector concluded in paragraph 91:

"91. The nine-to-ten months during which the caravans are occupied would be distinctly different from that envisaged by the Courts embracing the period of hop-gathering or potato-picking. By any reasonable interpretation of the language, it would be too broad a period within a year to comprise a '*particular season*'. Hence, the scheme would fail the third of the criteria of the GPDO permission."

Even if the references to "hop gathering" leave one with an impression of a vanished agricultural era, the Inspector's conclusion that, whatever "a particular season" means, it does not mean nine to ten months of the year, cannot be faulted.

44. It was the Inspector's consideration of the fourth criterion that formed the basis of the challenge under ground 3. For the reasons set out above, the challenge is academic and can be dealt with briefly. As the Inspector noted in paragraph 93 of the decision letter:

"93. There is no dispute that persons accommodated at the caravan site at Tuesley Farm carry out agricultural work at other farms elsewhere in Surrey and Berkshire in which the appellant has an interest. Buses are used for transport."

He gave more details in paragraph 94:

"It is Mr H Hall's evidence that in the five months of April to August 2005, the number of people living at Tuesley Farm rose from 35 to 305, then contracted to 205, before rising again to 220 at the end of the period. On a day-to-day basis, the number of persons working elsewhere varied between two (on numerous occasions) and 210 (a single maximum), though some might also spend part of the same day working at Tuesley Farm. On some 11% of those days in that period, more of the persons housed at the caravan site worked elsewhere than at Tuesley Farm. However, overall, the percentage of daily working time of people living at Tuesley Farm and working at the farm was 83% and hence, the balance working at other farms was 17%. The appellant argues that these persons are employed at Tuesley Farm rather than at some other location, regardless that on occasions their work might take them elsewhere."

The Inspector concluded in paragraph 96:

"96. It would not be the case that the proportion of time spent elsewhere other than at Tuesley Farm, given as 17%, would be insignificant; as a matter of fact and degree, it would be of such quantity as to amount to a material factor."

45. He therefore concluded in paragraph 100 that the occupiers of the caravans were not employed in farming operations on land "in the same occupation". Mr Straker submitted, in summary, that that conclusion was unreasonable: an employee spending 83 per cent of his or her time at the Farm was employed there, even if he or she spent 17 per cent of the time away working at other farms. He accepted that there would come a point when, as a matter of fact and degree, it could be said that someone was not simply employed at farm X but was rather employed at farms X and Y or farms X, Y and Z, but, he submitted, on the figures before the Inspector, that point was nowhere near reached. Alone among the submissions made on behalf of the claimant in these proceedings, I have some sympathy with this criticism of the decision letter, but bearing in mind that the issue was very much one of fact and degree, I would have been very slow indeed to substitute my own judgment for that of the Inspector. Happily, it is unnecessary for me to reach a concluded view on this issue since the Inspector's conclusions that the second and third criteria were not met were plainly open to him and are fatal to this ground of appeal.

Ground 4

46. In paragraph 114 of the decision letter the Inspector said that there were four main issues:
- (i) whether the scheme would amount to inappropriate development in the green belt, having particular reference to Structure Plan (SP) Policy LO4, Local Plan (LP) Policy C1 and national advice contained in PPG2;
 - (ii) the effect of the scheme on the character and appearance of the locality;

(iii) the effect of the scheme on the living conditions of nearby residents and on users of the local highway network; and

(iv) whether other material factors including benefits of the scheme exist that would clearly outweigh any harm arising from the above issues and thus justify the development."

47. In respect of those issues, the Inspector concluded that: (i): polytunnels were not inappropriate development in the green belt (paragraph 123).

(ii):

"The extensive blocks of polytunnels would not meet the high standards of design and appearance that development plan policies seek of buildings in the countryside. The proposed development, together with the landscaping master plan, would be out of place in terms of their scale, height, form and appearance, failing to protect the openness and intrinsic qualities of the countryside and failing to respect its character, contrary to SP Policies LO4 and LO5 and LP Policies C1 and C3. Their presence would fail to conserve or enhance the quality of the landscape within the AGLV to its long-term detriment and, in that part of the appeals site outside the AGLV, would fail to retain the distinctiveness of the landscape, also to its long-term detriment, contrary to SP Policies SE4 and SE8 and LP Policies D1 and D4. The implementation of the more extensive scheme of polytunnels on all but two or three of the individually-numbered parcels, as put forward by Mr H Hall, would serve only to reinforce these objections [paragraph 142]".

(iii):

"The proposed development together with the landscaping master plan would result in a loss of general amenity for nearby residents and highway users and also landscaping that would be unsuitable for the site and character of the area, all contrary to LP Policies D1 and D4. It would also harm the openness of the green belt, contrary to LP Policy C1, adding to the objections in terms of the first main issue[paragraph 152]."

(iv):

"However, in the balance that has to be drawn between the needs of this agricultural enterprise and environmental impact arising from the presence of the polytunnels, I am firmly of the view that those agricultural needs would be far outweighed by the harm to the countryside arising out of the scale and appearance of the polytunnels. The increase in 2006 and beyond in the amount of land embraced by polytunnels, as postulated by Mr H Hall, would only serve to underpin my concerns about the unsuitability of the appeals site to accommodate this form of development. Nor would conditions imposed on the grant of planning

permission be sufficient to overcome the harm arising from the continuing presence of the polytunnels [paragraph 162]."

48. Although a number of detailed criticisms of the Inspector's reasoning were contained in the grounds in the claim form, and in the claimant's skeleton argument, three matters were particularly relied upon by Mr Straker in his oral submissions before me. First it was said that the Inspector, having concluded that the polytunnels were not inappropriate development in the Green Belt, had failed to state that there were appropriate development in the Green Belt. Since Mr Straker rightly conceded that there was no presumption in favour of "appropriate development" in the Green Belt, I do not understand the basis of this criticism. Having concluded that the polytunnels were not inappropriate development in the Green Belt, the Inspector did not apply the stringent "very special circumstances" test which would have been appropriate in respect of such development, but instead went on to consider the planning merits of the polytunnels in the normal way, in the light of the policies in the development plan. He was clearly correct to do so. Paragraph 3.1 of the PPG2 says:

"3.1 The general policies controlling development in the countryside apply with equal force in Green Belts but there is, in addition, a general presumption against inappropriate development within them. Such development should not be approved, except in very special circumstances..."

Absent that general presumption, the normal development plan policies and government policy guidance had to be applied. These included not merely the development plan policies in respect of the area of Great Landscape Value but also paragraph 3.15 of PPG2, which states that:

"The visual amenities of the Green Belt should not be injured by proposals for development within or conspicuous from the Green Belt which, although they would not prejudice the purposes of including land in Green Belts, might be visually detrimental by reason of their siting, materials or design."

49. Mr Straker complained that the Inspector's formulation of issue (iv) put the boot on the wrong foot. It was not for the claimant to justify the development, it was for the second defendant to persuade the Inspector that there were good reasons to refuse planning permission. That is to misread issue (iv). If the Inspector had concluded that there was no harm arising under issues (ii) and (iii), there would have been no need to justify the development. Since he clearly did conclude that there was serious harm under issues (ii) and (iii) (see above), and those conclusions are not challenged, there was plainly a need to show that the benefits of the polytunnels outweighed those objections if planning permission was to be granted.
50. Then it is said that the Inspector wrongly took into consideration an immaterial factor: that the polytunnels had been erected without planning permission, and reached a conclusion unsupported by evidence that there was no certainty that, if there were no

polytunnels, the farm could be disposed of as a viable agricultural unit. These criticisms stem from two paragraphs in the decision letter:

"159. The use of the appeals site by the appellant for the production of soft fruit without, at first, clearly establishing, by the means available in Part VII of the 1990 Act (as amended), the lawfulness or otherwise of the polytunnels, is unfortunate and is to be set against the argument that the polytunnels would be essential to the successful production of soft fruit at the appeals site. The benefits of production adduced by the appellant are founded on unauthorised development more designed to meet the particular demands for crops grown under cover.

160. It is clear that the cessation of the use of the appeals site for soft fruit production under polytunnels would affect the interests of the appellant firm: But the appellant bought the farm as a viable agricultural unit and there would be no certainty that it could not be disposed of as such should that become necessary. Clearly there has been considerable capital investment in the enterprise, not least in the cost of the polytunnels. But again, there would be no certainty that some, if not all, of those costs would not be recouped. Moreover, there would be no certainty that the appellant firm would be unable to continue operating the other farms in which it has interests without the contribution from the appeals site."

51. Those two paragraphs should not be read in isolation but in the context of the remainder of this part of the decision letter. Once that context is considered, it is plain that the Inspector, having considered the significance of the farm's production of soft fruit in the wider United Kingdom context (in paragraphs 157 and 158), was in paragraph 159 considering the claimant's argument that polytunnels were necessary to grow soft fruit on the farm. The Inspector was doing no more than saying that, since the claimant had chosen to adopt a particular mode of agriculture -- soft fruit production, for which polytunnels were necessary -- it was "unfortunate" that it had not first either obtained planning permission or ascertained whether or not planning permission was required before embarking upon that particular type of agriculture. But, and this is the important point, the Inspector was clearly not satisfied on the evidence before him that soft fruit production (which required polytunnels) was the only way in which the farm could be worked as a viable agricultural unit. Although Mr Straker criticised the Inspector's use of the words "there would be no certainty", decision letters should be read in a common sense and straightforward way. The Inspector was not writing a learned treatise on agricultural viability. Mr Straker in his closing submissions had said that there would be a danger of fragmentation of holdings. Mr Katkowski QC, who represented the Tuesley Farm Residents Group before the Inspector, had submitted:

"Tuesley Farm was sold to [the claimant] in 2003 and was sold as a viable agriculture unit. There is no evidence that if permission were not granted the farm could not be resold as a viable agricultural unit, being of a large size and with good quality soil. At the time of the sale other offers were made for the farm. Mr Aspury [a witness for the claimant] made clear that he was not saying that if permission was refused the farm would be lost to

agriculture..."

In summary, the Inspector, as he was perfectly entitled to do, was accepting in paragraph 160 of his decision letter those submissions that had been made on behalf of the residents.

52. Even if I had been persuaded that there was some force in any of the detailed criticisms under this ground, I would not have been minded to quash the Inspector's decision, bearing in mind the contents of paragraph 162 of the decision letter, which make it plain that this was not a finely balanced case in the Inspector's view. He said that he was "firmly of the view that [the] agricultural needs would be far outweighed by the harm to the countryside arising out of the scale and appearance of the polytunnels." It would therefore require an error of major significance in the remainder of the reasoning to justify quashing the Inspector's decision.
53. For all of these reasons, the appeal must be dismissed.
54. MR BROWN: My Lord, I am very grateful for that. In the circumstances, I ask for an order that the claimant pay the first defendant's costs. My Lord, because this was originally listed for two days, cost schedules were not exchanged yesterday. A cost schedule has been submitted today and I am going to ask your Lordship to summarily assess costs. I wonder if I could hand up a list. I recognise, my Lord, that if my learned friend objects to summary assessment in principle, I do not fall within that situation where I am entitled to it but I am anticipating that, while there may be one or two comments to make about it, both parties will recognise it is easier to do it today rather than send it off for detailed assessment. My Lord, our costs schedule, bottom line, the second page, £14,064, I am going to ask for summary assessment in that sum.
55. MR JUSTICE SULLIVAN: Yes. What do you want to say about that? Have you just seen this?
56. MR STRAKER: My Lord, I have seen this. I am very grateful to the first respondent, who provided that this morning. Our only comment is that we did have a raised eyebrow, as it were, at the number of hours on work done on documents, bearing in mind, I am sure, that the Council was instructed to draft the response to the skeleton argument.
57. MR JUSTICE SULLIVAN: I have not seen, I do not think, a statement of costs from the claimant. I am not necessarily asking to do so but I would have to be surprised if it was not somewhat in excess of that claimed by the Treasury Solicitor and one has to bear in mind, as generally a proportionate approach, sometimes the more hours spent by a Treasury Solicitor scratching his or her head about something can lead to fewer hours required of Mr Brown to scratch his head about it.
58. MR STRAKER: My Lord, I do take that point. My Lord, we do not take an issue on it. We accept that.

59. MR JUSTICE SULLIVAN: Right. Thank you very much. Then, at least so far as the -- any other applications? No? I am not encouraging them or inspecting them. I just want to be sure.
60. Right then, the appeal is dismissed. The claimant is to pay the first defendant's costs, those costs to be summarily assessed in the sum claimed, £14,064.
61. MR STRAKER: My Lord, there is an application. I am instructed to make an application for leave to appeal to the Court of Appeal.
62. MR JUSTICE SULLIVAN: I do not think you can to me because it is a second appeal.
63. MR STRAKER: Your Lordship is absolutely right.
64. MR JUSTICE SULLIVAN: Unlike the planning ones, where they are for some odd reason treated as an application, this is a second appeal and so you have to go to the Court of Appeal, I am afraid. So you would not have the benefit of knowing whether I would have given you permission or not.
65. MR STRAKER: I think I would have probably guessed the answer.
66. MR JUSTICE SULLIVAN: Yes, I would not put too much on that. Thank you very much.