

Item 9

ITEM NO.

REPORT TO DEVELOPMENT CONTROL

9 January 2009

REPORT OF HEAD OF PLANNING

Planning and Development Portfolio

Tree Preservation Order No. 56/2008 North Close

1. SUMMARY

- 1.1 A provisional Tree Preservation Order (TPO) was made at the above site on 10 October 2008. The purpose of this report is therefore to consider whether it would be appropriate to make the Order permanent, amend the Order or revoke the Order .
- 1.2 The Town and Country Planning Act 1990 enables Local Planning Authority (LPA) to make a TPO if it appears to be “ expedient in the interests of amenity to make provision for the preservation of trees and woodlands in their area”. The Order must be confirmed within 6 months of being made or the Order will be null and void. The serving of the TPO is normally a delegated function, whilst the confirmation is by Development Control Committee.
- 1.3 The woodland, groups and individual trees not only provide a high degree of amenity to the local area but are considered worthy of protection to preserve the character of the wider landscape of this part of the Borough.
- 1.4 The consultation resulted in 5 objections

2 RECOMMENDATIONS

- 2.1 It is recommended that Committee authorise confirmation of the Order.

3. BACKGROUND

- 3.1 The settlement of North Close has developed over the last 80 years and commands a prominent elevated position in the local landscape, being one of the highest points in the Borough. The landscape and settlement is heavily influenced by mature trees, some of which are remnants of ‘Durham Head Plantation’, which was gradually felled in the 50’s and 60’s to make way for housing. The mature

trees provide the major landscape feature of the settlement and contribute significantly to the character of the area.

- 3.2 Only one tree in the settlement enjoys any permanent protection at the present time and there has been a steady degradation of the tree cover within recent years. The order will ensure that replacement trees are planted should it be necessary to remove any protected trees.
- 3.3 The trees provide a major skyline feature as seen from surrounding villages.
- 3.4 The residential plots may be subject to development pressures. The trees will therefore provide design constraints for any new build helping to preserve the character of the settlement.
- 3.5 In 2006 NEDL felled and pruned a significant number of trees in North Close that resulted in significant public concern for the preservation of the tree cover in the area. The TPO is in part a long term response to these concerns and a mechanism for future statutory consultation between NEDL and the Local Planning Authority (LPA). It is the LPA's belief that without some tree protection measures the character of the settlement will change to the detriment of the area as a whole.
- 3.6 Whilst we agree that the TPO covers many trees in the settlement we feel that this is elevated position and the current lack of statutory protection.
- 3.7 A TPO was served in April this year but after protracted negotiations with residents and two Development Control Committee meetings the Order was about to lapse.
- 3.8 The reason for the extraordinary delay was because one of the residents suggested that a recent Court decision affected the validity of the Order and also we have had difficulty in agreeing the date of a site visit with this resident.
- 3.9 We therefore decided to draw up a new Order to more accurately reflect the location of the trees and bring the matter back to Members.

4 CONSULTATIONS

- 4.1 Under the terms of the Town and Country Planning Act 1990 and the Town and Country Planning (Trees) Regulations 1999, the Order was served on the owners of the land on which the trees stand and 2 site notices were posted around the settlement. Spennymoor Town Council was also consulted. The parties were invited to make representations within 28 days of the date the Order was served, in order that comments could be reported to Committee.
- 4.2 The consultation resulted in 5 objections. 2 comments were disallowed as they did not comply with the regulation 4 notice.

- 4.3 The objections are reproduced at Appendix b

The objections broadly concentrate around the following issues;

- a. A TPO is not necessary.
- b. Serving of a TPO will restrict development.

5 RESPONSE TO OBJECTIONS

A TPO is not necessary.

- 5.1 In serving TPO's we are guided by central government advice to Local Planning Authorities

"Other factors (such as importance as a wildlife habitat) may be taken into account...the risk of felling need not be imminent before an Order is made and trees may be regarded at risk generally from development pressures and changes in property ownership; and intentions to fell are often not known in advance and the preservation of selected trees by precautionary orders may therefore be considered to be expedient"

...DOE Circular 36/1978

- 5.2 The Government have long recognised that changes in property ownership are becoming more frequent and that tree management, taste and fashion may influence landscape management and as trees grow older the lay person may be more inclined to remove trees and not to replant trees.
- 5.3 Inappropriate management has been carried out in the last few years to the detriment of the longevity of individual trees protected by this Order.
- 5.4 Applications for works to protected trees attract no fee and the LPA seek to control the quality of the works carried out rather than any works *per se*. Large trees need very infrequent pruning, therefore, applications should not need to be lodged on a regular basis.

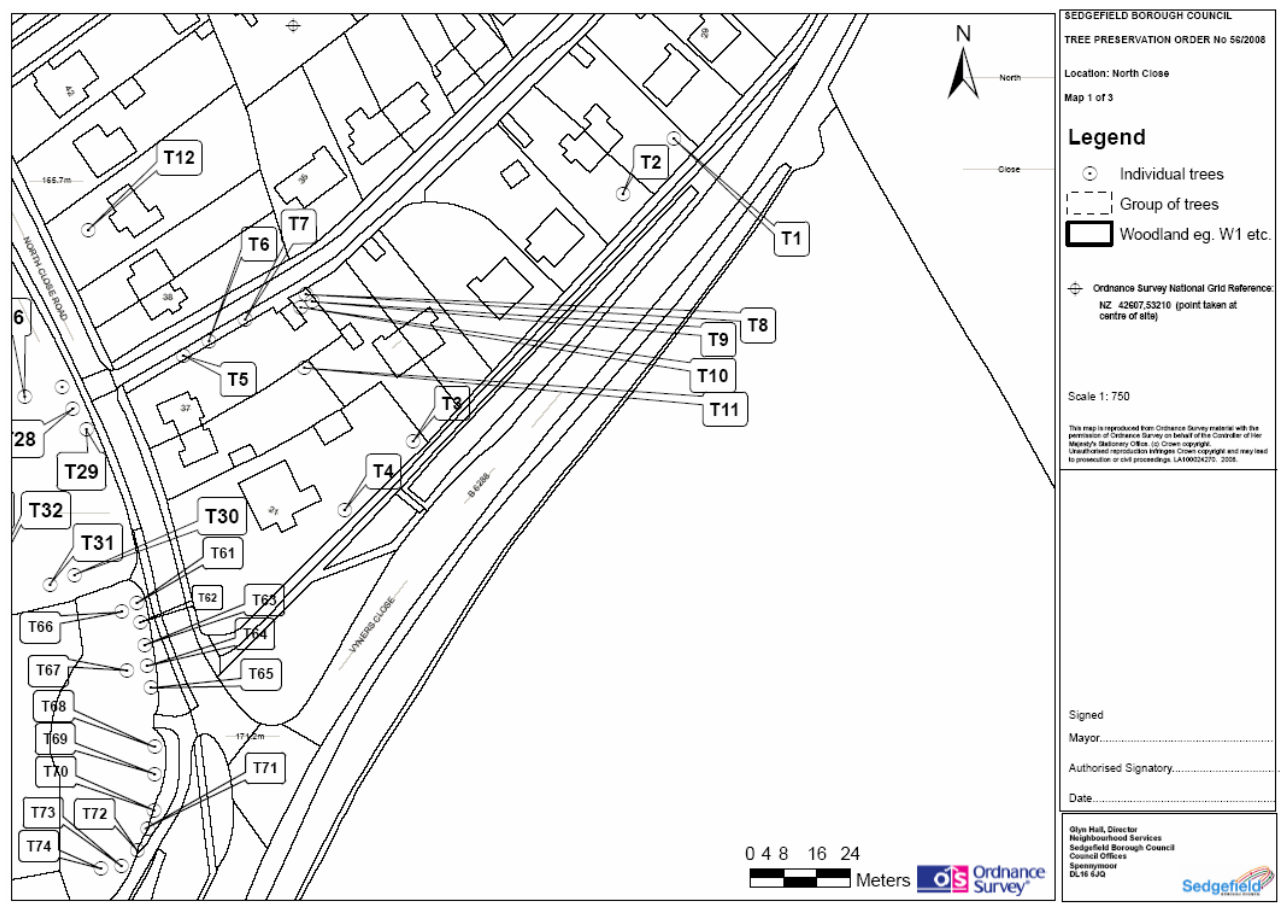
The Order restricts development

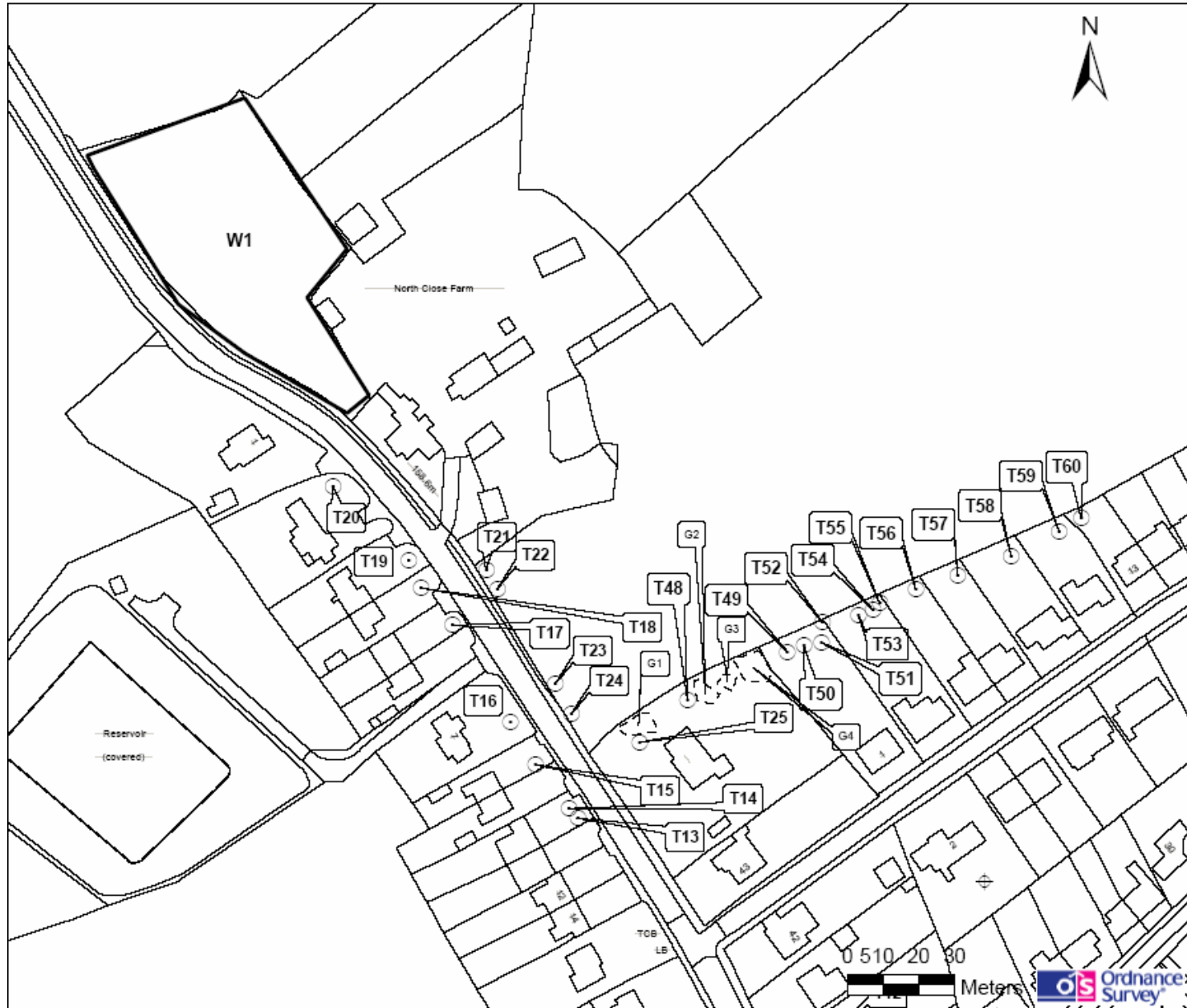
- 5.5 Any development of a property would be considered on its merits under planning regulations in force at the time. The presence of trees on the site will be a constraint to layout but will form only part of the considerations following a planning application.
- 5.6 Tree Preservation Orders are served to protect public amenity regardless of whether the site is subject to planning enquiries.

5.7 There are locations covered by the Order where the trees are a live material development consideration.
 In planning terms it is always preferable to identify important trees prior to consideration of development enquiries. The serving of the Order was not driven by any particular development proposal but adopted a precautionary approach that has subsequently proved to be of value in development negotiations.

Background Papers

Appendix A; Tree Preservation Order 56/2008 maps 1-3





SEDGEFIELD BOROUGH COUNCIL
 TREE PRESERVATION ORDER No 56/2008

Location: North Close
 Map 2 of 3

Legend

- Individual trees
- ⋯ Group of trees
- ▭ Woodland eg. W1 etc.

⊕ Ordnance Survey National Grid Reference:
 NZ 42607,53210 (point taken at centre of site)

Scale 1: 1000



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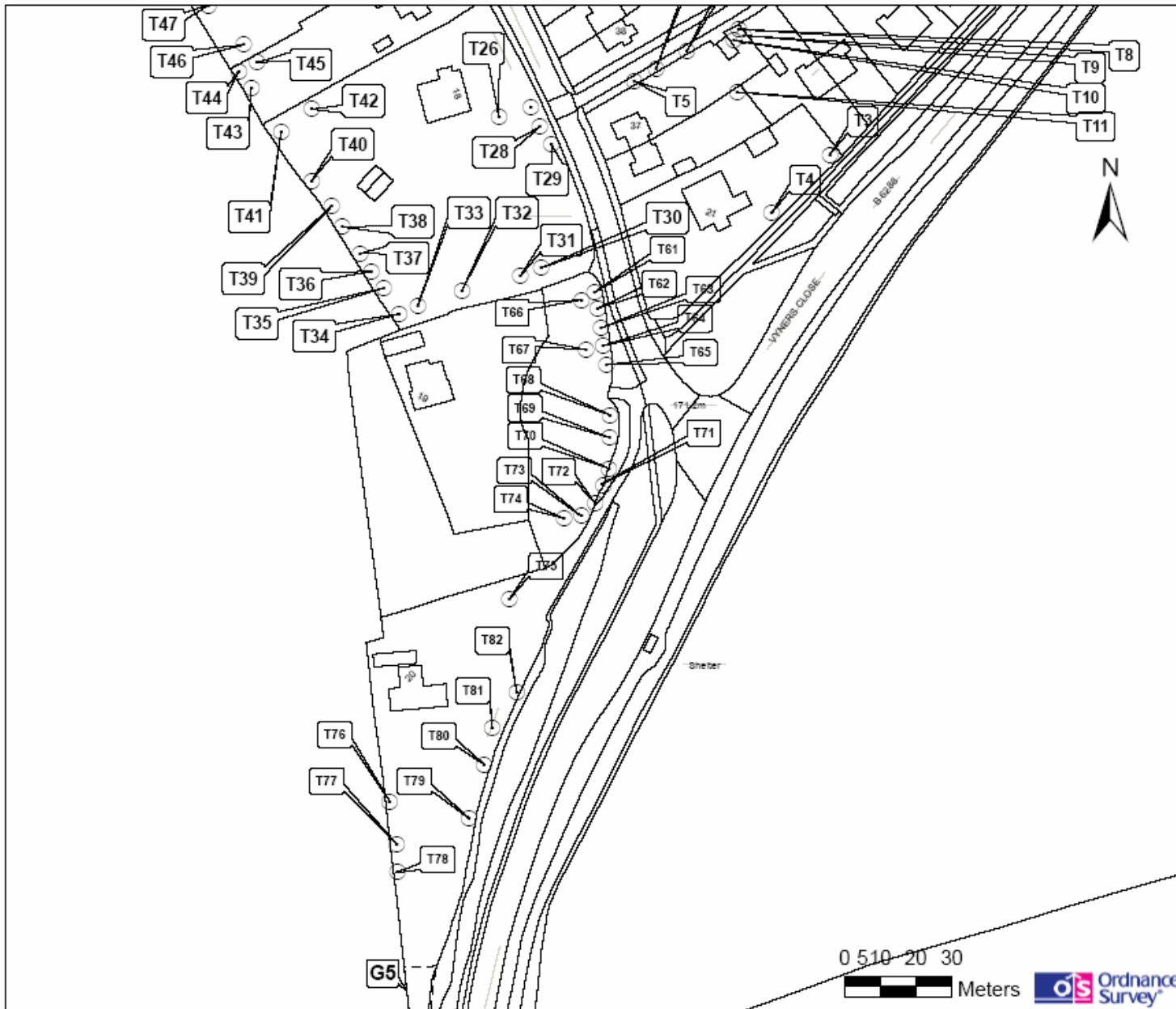
Signed
 Mayor.....

Authorised Signatory.....

Date.....

Glyn Hall, Director
 Neighbourhood Services
 Sedgefield Borough Council
 Council Offices
 Spennymoor
 DL16 6JQ



SEDFIELD BOROUGH COUNCIL
 TREE PRESERVATION ORDER No 56/2008

Location: North Close
 Map 3 of 3

Legend

- Individual trees
- Group of trees
- Woodland eg. W1 etc.
- Ordnance Survey National Grid Reference:
 NZ 42607.53210 (point taken at centre of site)

Scale 1: 1000

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Signed
 Mayor.....
 Authorised Signatory.....
 Date.....

Glyn Hall, Director
 Neighbourhood Services
 Sedfield Borough Council
 Council Offices
 Spenny Moor
 DL16 6JQ

Appendix B

DEVELOPMENT CONTROL
RECEIVED

10 NOV 2008

44 North Close
Kirk Merrington
County Durham
DL16 7HH

Mr C.F.G. Walton
Head of Planning Services
Neighbourhood Services
Sedgefield Borough Council
Spennymoor
DL16 6JQ

03.11.2008

Dear Mr Walton,

Re: Tree Preservation Order North Close. (TPO56/2008)

With regard to your letter dated 10th Oct 2008. Having given the issue of the Tree Preservation order on my property at North Close great consideration, I must object to the changes of the order from a woodland order to the placing of TPO's on the trees highlighted.

I also wish to raise my concerns with regard to the lateness of the delivery of the new order. As I am sure you are aware you signed the new order on 9th October 2008. I did not receive notification until the 15th October, the material sent was franked 14th Oct. Although the order was raised on the 9th no public notices were placed until after 14th in the village.

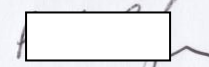
Can you please ensure that we receive notice in writing of the times and venue of the committee meeting regarding this matter, together with any information regarding my opportunity to present my concerns verbally to the committee.

I recognise that you wish to ensure the public amenity is protected within the borough, which I'm fairly sure the inhabitants of North Close also do. Unfortunately your insistence that this can only be achieved by a costly bureaucratic preservation order and a significant reduction in my rights to maintain my own property is unacceptable. With the development of the new unitary authority, with the order in place I could soon find that I have to write to County Hall in Durham to carryout any reasonable husbandry within my garden.

As I stated earlier I do not wish to remove any trees from my property only if they become a danger to the buildings or identified as necessary by a qualified tree surgeon.

I strongly object to the original order and now the amended TPO's, I also wish to highlight the continued waste of time and resources being spent on this matter.

Yours faithfully,


Mr P English

To Roger Lowe

J. HAWKSBY
37 NORTH CLOSE
SPRINGWOOD
CO DURHAM
DH16 7HH.

DEVELOPMENT CONTROL
RECEIVED
11 NOV 2003

DEAR SIR

We would like to express our concerns about the tree preservation order on our properties. In order to keep our properties to the standard they are we should be allowed to carry out any work needed to maintain the trees as and when without having to have permission. Most of the trees are within in peoples boundaries so surely these belong to the property owner. There are three trees in my garden which need pruning as they are now brushing against my garage roof and if left will cause damage.

I think you will agree by the response at the last meeting that the majority of residence do not want this order to be permanent so that they can manage there gardens as they wish as they have done for many years

[Redacted Signature]

10 November 2008

Received
before 12.00

Head of Planning Services
Neighbourhood Services,
Sedgefield Borough Council,
Council Offices
Spennymoor, DL16 6JQ

Dear Mr. Walton,

I totally object to this tree preservation order that you have placed on my property that you have classed as woodland (W1).

The reasons for my objections are as follows. This is a wood on a farm planted by my family and has nothing to do with anybody else, in fact a third of it is classed as back garden by my family there is an old hedge to prove this.

All you are doing is to deny me my right of maintaining this wood or entering it on a

state.

I do not like the way you the Council have behaved in this matter, you have no idea of actually what you are doing here.

Yours Sincerely
MR

18 North Close
Spennymoor
Co. Durham
DL16 7HH

C. F. G. Walton
Head of Planning Services
Neighbourhood Services
Sedgefield Borough Council
Council Offices
Spennymoor
DL16 6JQ

DEVELOPMENT CONTROL
RECEIVED
11 NOV 2008

received
11.11.08

10 November 2008

Objection to Provisional Tree Preservation Order - North Close TPO 56/2008

Dear Sir,

Regarding your letter of 10 October 2008, I wish to make formal objection to the above Order and I list my objections below.

1. *'The mature trees provide the major landscape feature of the settlement and contribute significantly to the character of the area.'*

Seventy-three years ago my grandparents came here and created a garden from a bleak quarry. The land was landscaped and then hedges, bushes, plants and trees were planted to be looked after and cared for by them. This tradition has continued through the generations of our family. Any amenity value that the property has, is because of us and as our property is not for sale, then so we will continue to manage it as we do now. This Order will take away our control of certain aspects of our garden.

2. *'The trees provide a major skyline feature as seen from surrounding villages.'*

This statement is ambiguous. North Close is not on the skyline, the nearby Kirk Merrington is actually higher. North Close is on sloping land, which means it cannot be seen from all sides.

3. *'There has been a steady degradation of the tree cover within recent years and the Order will ensure that replacement trees are planted should it be necessary to remove protected trees.'*

The amount of tree volume in North Close has actually increased over time as the predominant trees are sycamores, which grow quickly and to a great size. These trees are not native.

Natural loss does obviously occur, for example in our garden, 3 mature trees (apple, cherry and hawthorn) blew down in recent high winds. Similarly, over the years, several trees in a row of macrocarpas which my grandfather planted, have blown down. As these fell on the main road, we took the decision that the row needed to be pruned back for safety reasons. This cost a great deal of money, was undertaken professionally and took many days. All fallen trees were cleared away, a major time-consuming task and we continue to replant at our own expense.

If it is believed that there is a degradation of tree cover, perhaps consideration could be given to a policy of planting trees in those areas where presently there are none.

4. *'The residential plots may be subject to development pressures. The trees will therefore provide design constraints for any new build helping to preserve the character of the settlement.'*

Using a TPO to control development is wrong. Over the years, properties in North Close have changed so as to fit in to the modern world. This new Order has not been served on all properties in North Close, so the above statement is considered discriminatory against the owners of properties where it has been served.

Other Objections:

1. *Financial Implications*

We feel that future financial implications of this Order on property owners are not explicit. It is possible that requests to do tree work (if required under a TPO) may attract substantial fees in years to come. This will be in addition to the cost of any surveys, extra work or replanting if required. This would place an unnecessary and unwelcome onus on owners.

2. *Discrimination*

This Order has not been served on all properties in North Close. In fact, only 27 of the 90 properties on the estate are covered by this Order. Any controls, restrictions or financial burdens that the Order imposes are therefore only imposed on certain properties.

The Order is heavily focused on a handful of properties. The trees identified on 5 properties actually make up over 50% of the trees in the Order. Some properties are therefore under excessive control and this could affect the owner's right to manage their own garden as they wish.

3. *Right to control your own garden*

A garden is a balance of growing things. If trees are to be considered because of their amenity value or size in preference to other plants in a garden, then that is wrong. As the trees on our property have grown in size over the years, then so have the areas of shade underneath. This lack of sunlight means we are losing parts of our garden, as many plants will not grow there. If we are not allowed to control our trees as we wish, then effectively, we are losing control of our garden.

4. *Woodland*

The inclusion of a woodland (W1) in this Order is wrong. North Close is a private residential area with some trees, not a forest or woodland containing houses.

5. *The new Order*

Your letter states that you felt the Order 54/2008 did not provide clarity for all concerned, therefore it was allowed to lapse and this new Order was served which '...more precisely identifies the important trees in the village.' Note is also made in the letter that objections and comments submitted in relation to the original Order cannot for legal reasons be transferred to the new Order.

27 properties are affected by the Orders and the only differences, which are apparent, between this new Order and the previously revised Order, cover the re-classification of 2 properties from woodland to specified trees/groups. It can therefore be deduced that for the other 25 properties, there are no changes

contained within the new Order. With this in mind, it is felt that the changes, which have now been carried out on those 2 properties, could have been done within the old ammended Order, thus invalidating the need for a new one. It is difficult to understand the justification for this new Order being given as a lack of clarity, since for the majority of properties affected, the Orders are exactly the same.

Considerable time and effort was spent by many property owners (with some incurring financial losses) responding to the original Order and attending 2 Development Control Committee meetings in the council chambers.

Following the second meeting, we were promised that we were to be given every chance to attend and speak at a later Development Control Committee meeting. This was to take place after the summer holidays in September / October, when a vote was to be taken on the Order. This did not happen, as the original Order was allowed to lapse.

Considering the considerable time elapsed since the second meeting on 11 July 2008, it is very unsatisfactory that we were never notified as to the situation, or indeed told that a further provisional Order would be started. Effectively, this now means there will be a provisional Order in force for 12 months. The consequences of the unexplained 'legal advice' being that we have to restart as if it was the first Order, which is not acceptable given that the Order is the same for the majority of the properties.

Further, even though Order 56/2008 started on 10 October 2008, residents were not informed by mail until 15 October 2008 (mail was sent and post marked 14 October 2008). There was no reason not to inform residents earlier, especially as Order 54/2008 lapsed on 11 October 2008.

I hope that all my objections will be taken into consideration and I trust that this new Order will be removed from those properties where it is unwanted.

Yours faithfully,




B West

Highfield
19 North Close
Kirk Merrington
Spennymoor DL16 7HH

10 November 2008

Head of Planning Services
Neighbourhood Services
Sedgefield Borough Council
Council Offices
Spennymoor DL16 6JQ

DEVELOPMENT CONTROL
RECEIVED

11 NOV 2008

Dear Sir

North Close Provisional Tree Preservation Order 58/2008

I refer to the above order set out in your letter dated 10th October 2008, and wish to register dismay that the authority has decided to resurrect order 54/2008 despite all of the objections and rebuttals submitted between April and October 2008.

Prior to expressing my views on the new order, I seek your clarification in the opening paragraph of your letter dated 10th October 2008, wherein you state that the original order TPO 54/2008, dated 11th April 1008, would lapse on 14th October 2008. Given that the authority has a statutory six months to determine the order, I calculate the lapse date to be 10th October 2008.

Resurrection of this order is viewed as vindictive and unnecessary. Not only is the council taxpayer funding the preparation of the order, together with abortive costs on the last provisional order, but there is a double cost to the taxpayer in having to allocate time and personal funding to respond appropriately; in effect we are paying twice for the authority's failures. I would, therefore, request (under the Freedom of Information Act), details of the costs incurred to date on order 54/2008 and order 58/2008.

Turning to the new order 58/2008, I must object to the entire order, not only relative to this address for the following reasons: -

1. The order should be deemed invalid as the documents signed by the Mayor are incorrect. O.S. Maps 1, 2 and 3 all refer to Tree Preservation Order 56/2008, whereas the written documentation gives the order as 58/2008. Clearly, the Mayor has signed an erroneous document and should never have been placed in such a position.
2. Despite several previous letters and verbal indications in the Committee meetings, O.S. Map 3 of 3 has been reissued without correction of the boundaries between 19/20 North Close, which brings into question ownership and thus responsibility of T 75.

Please confirm that **all** parties have been written to regarding the order as this was not done in the original order (as acknowledged in your letter dated 10th June 2008).

Cont...

3. The stated reasons for the need of a T.P.O. include: -
- That "Trees provide a major skyline feature as seen from surrounding villages".
The only higher village that can view North Close is Kirk Merrington and then only from one vantage position at Merrington View.
 - Another item of 'Justification' for the order is that there has been tree degradation in recent years. Despite this statement having been countered on a number of occasions, the authority has still failed to provide such evidence, or to discuss the reasons for the incorrect and misleading statement.
 - A third reason given is that the order is necessary to restrict development. This is considered to be unlawful and discriminatory.
4. The selection of trees to be included in the order appears arbitrary and without just cause. There has been no full inspection of the trees to determine their quality or life expectancy, nor any detailed inspection of the ground conditions into which they are planted. Many of the trees specified in the order are of poor quality and not worthy of a T.P.O.

Many of the trees are not native species or could rank as specimen trees.

5. The order covers 105 trees (including those in 5 "groups"), which is considered to be an excessive, and stated by the Council's tree officer at an earlier council meeting, to be unique due to the number of listings in one order.

The order comprises: -

Beech	2
Oak	2
Sycamore	59
Copper Beech	1
Lime	7
Elm	2
Spruce	1
Norway Spruce	5
Larch	1
Norway Maple	2
Black Pine	18
Ash	1
Lawson Cypress	3
Monkey Puzzle	1
	<u>105</u>

I again question the inclusion of 59 Sycamore trees. You have been advised on previous occasions of the statement by the Royal Forestry of England that Sycamores are invasive and controversial, yet you persist in including this species in large numbers in the order.

Cont...

6. Turning to the trees affecting my property: -

- a) T 61 is considered to be in poor condition and should be removed from consideration.
- b) T 62 is too high and requires topping.
- c) T 66 does not appear in the garden where shown on the plan.
- d) T 68 does not appear where shown.
- e) T 67 (Money Puzzle) cannot be seen from any roadway or pathway outside the curtilage of the house and should not form part of the order. There are at least 2No. other Monkey Puzzle trees in North Close, both visible from the road, which have not been included in your order (one of which is in the garden of a former council officer). Please explain why I am discriminated.
- f) T 32 is not sited on my property but is the cause for concern due to overhanging branches. Access to my property is impeded as oil delivery vehicles catch the tree and also the overhanging branches cause damage to my asphalt surfacing from sap deposits. My neighbour is understand and willing to cut back the tree, but is prevented from doing so since April 2008, due to your intervention. It is therefore reasonable to hold the authority financially responsible for further damages.

7. In conclusion, please register my objection to the full scheme and not just the trees on 19 North Close. I consider the whole episode of events to date to be a clear abuse of power and waste of council tax payers monies, which could have been put to more meaningful purposes.

Yours faithfully



K Marley
Senior Surveyor

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