

# Item 5

## REPORT TO DEVELOPMENT CONTROL COMMITTEE

20 February 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 6 objections and one letter of support.

#### 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 In 2006 NEDL proposed to fell 20 trees and prune a significant number of trees in North Close, this 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 believed that without some tree protection measures the character of the settlement will change to the detriment of the area as a whole.
- 3.4 A TPO was served in April 2008 but after protracted negotiations with residents and two Development Control Committee meetings the Order was about to lapse.
- 3.5 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 officers have had difficulty in agreeing the date of a site visit with this resident.
- 3.6 Planning Services decided to draw up a new Order (56/2008) to more accurately reflect the location of the trees and bring the matter back to Members.
- 3.7 On 6 February 2008 a further report was presented to Committee recommending that the new Order (56/2008) be confirmed. During the course of the meeting it became apparent to members that a number of procedural matters remained unanswered and consideration of the report was deferred to enable officers to meet with the objectors in order to address these issues before bringing the report back to committee.

#### **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, adjacent properties 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 6 objections and one letter of support.
- 4.3 The various responses are reproduced at Appendix b

## 5 **RESPONSE TO OBJECTIONS**

5.1 At the request of Members, the objectors and Officers met to discuss the issues raised by the consultation and further objections have been recorded. The objections were numerous and each objection has been acknowledged, reproduced and been given a written reply. Issues have been further discussed at a specially convened meeting and further correspondence has ensued. Because of the wide breadth of objections and comments and in the interests of a concise report the objections have been presented in the following categories;

- a. Procedural matters
- b. Material Planning issues
- c. Other issues (Appendix c)

### 5.2 Procedural Matters.

A number of objections were raised stating that certain technical details relating to the draughting and serving of the Order were significant defects in the Order. The salient individual points are included at Appendix c along with the local planning authorities response.

5.3 These procedural issues have been carefully reviewed and Officers are satisfied that the order has been drawn up in accordance with Best Practice and is procedurally sound.

### 5.4 Material Planning issues.

In considering whether or not to confirm the Order the following planning issues are considered to be the most relevant:

- The amenity value of the trees,
- and the expediency of making the Order.

### 5.5 Amenity Value

Amenity value is not defined in the Act, but there is guidance in the Tree Preservation Orders: A Guide to the Law and Good Practice which is commonly known as the Blue Book. The guidance says:

- TPOs should be used to protect selected trees and woodlands if their removal would have a significant impact on the local environment and its enjoyment by the public.
- There must be a reasonable degree of public benefit. The trees, or part of them, should therefore normally be visible from a public place, such as a road or a footpath. Other trees may however also be included, if there is justification.

- The benefit may be present or future.
  - The value of the tree or trees may be from their intrinsic beauty; for their contribution to the landscape; or the role they play in hiding an eyesore or future development.
  - The value of trees may be enhanced if they are scarce.
  - Other factors, such as their importance as a wildlife habitat, may be taken into account, but would not, alone, be sufficient to justify a TPO.
- 5.6 It is not appropriate to protect a tree that is dead, dying or dangerous. As a general rule, the officers will only consider protecting a tree where they are satisfied that it has a safe life expectancy in excess of 10 years.
- 5.7 On this occasion it is considered that the trees have high amenity value. The trees are visible from a number of public vantage points and their removal would have a significant adverse impact upon the local environment and its enjoyment by the public. Furthermore, officers are satisfied that with the exception of 2 trees they have a safe life expectancy in excess of 10 years. The two trees that do not fit this criteria and were brought to the attention of the LPA by the Country Landowners Association, have been recommended for omission.
- 5.8 Expediency
- Expediency is not defined in Act, but some guidance is given in the Blue Book. In essence, the guidance says:
- It is not expedient to make a TPO in respect of trees which are under good arboricultural or silvicultural management.
  - It may be expedient to make a TPO if the local authority believes there is a risk of the trees being cut down or pruned in ways which would have a significant impact on the amenity of the area. It is not necessary for the risk to be immediate. It may be a general risk from development pressures.
  - A precautionary TPO may also be considered appropriate to protect selected trees in advance, as it is not always possible to know about changes in property ownership and intentions to fell.
- 5.9 Whilst it is considered that the trees are not under immediate threat 9 trees have already been lost during the NEDL line clearance works and had the Local Authority not intervened following concerns from local residents it is certain that many more trees would have been lost. Furthermore the consultation exercise resulted in a letter from a resident claiming that many trees had been lost in the last 25 years and the landscape had become poorer for it. In addition T1 was very badly lopped in 2007. If this tree had been protected then a more sympathetic and sustainable outcome could have been achieved
- 5.10 Although there is no known immediate threat to most of the trees the Preservation Order has been made to conserve the landscape in the medium to long term and is

therefore a largely precautionary Order. This approach is consistent with that advocated in Blue Book.

- 5.11 Some issues that may not be taken into account include the question of whether or not the protected tree may influence the outcome of a planning application is not relevant to deciding confirmation. If an Order is in place on an application site, it is a material consideration in determining the application. That is however an issue that may be addressed solely through the development control process.
- 5.12 Finally, the principle of whether or not the landowner wishes a TPO to be imposed is also not relevant. The test is the public amenity value of the trees.

## **6. Human Rights Act 1998 considerations**

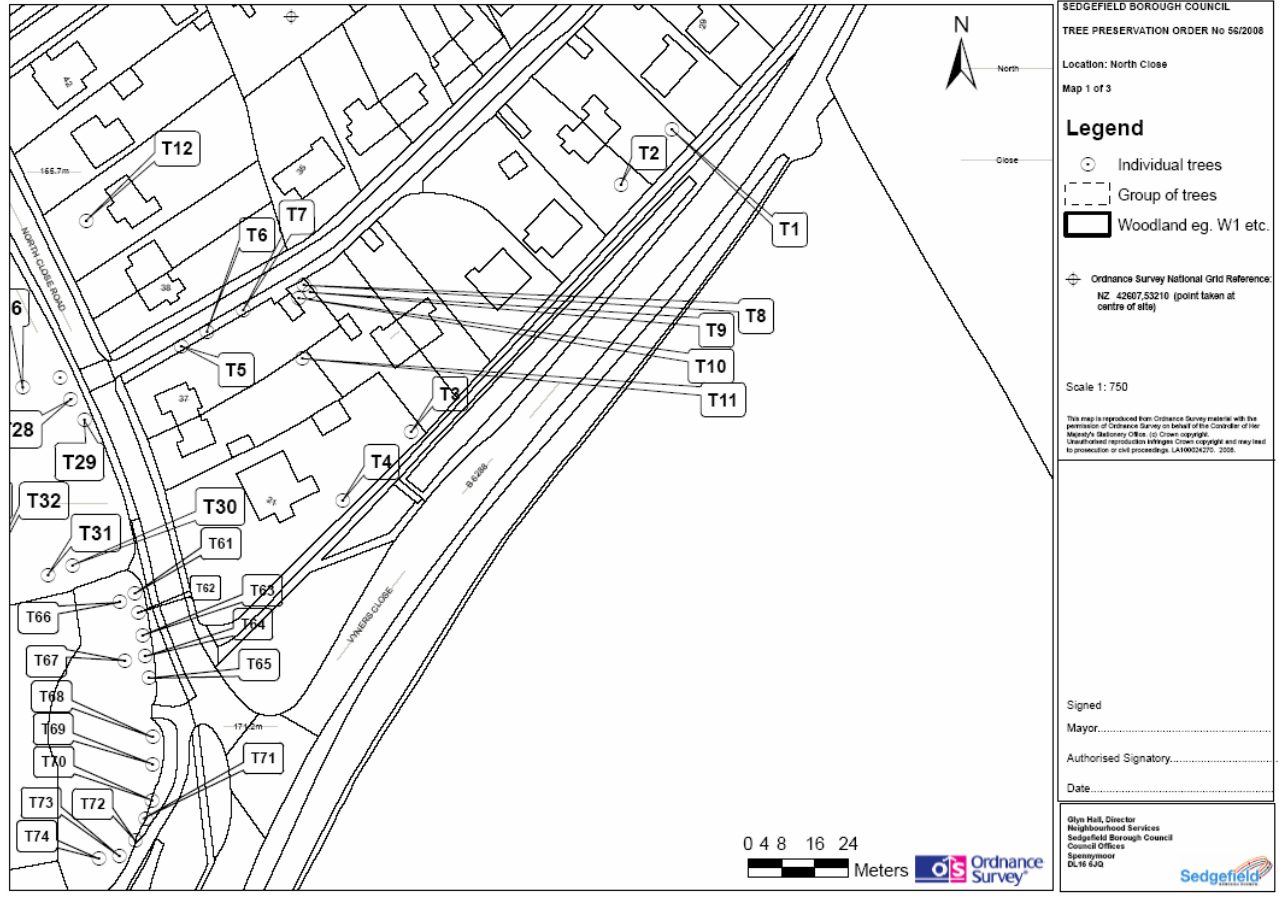
- 6.1 This Tree Preservation Order needs to be considered against the provisions of the Human Rights Act 1998. Under Article 6, the third parties, including local residents, who have made representations, have the right to a fair hearing and to this end the Committee must give full consideration to their comments. Article 8 and Protocol 1 Article 1 confer(s) a right of respect for a person's home and a right to peaceful enjoyment of one's possessions, which could include a person's home, other land and business assets. Any violation of rights under Articles 1 and 8 must be proportionate to the action of confirming the tree preservation order. However, in such cases the human rights of the individual must be balanced against the rights of the public to expect the planning system to protect trees when its amenity value justifies such protection. In this instance, it is your officer's opinion that in this balancing act the protection of the trees should prevail.

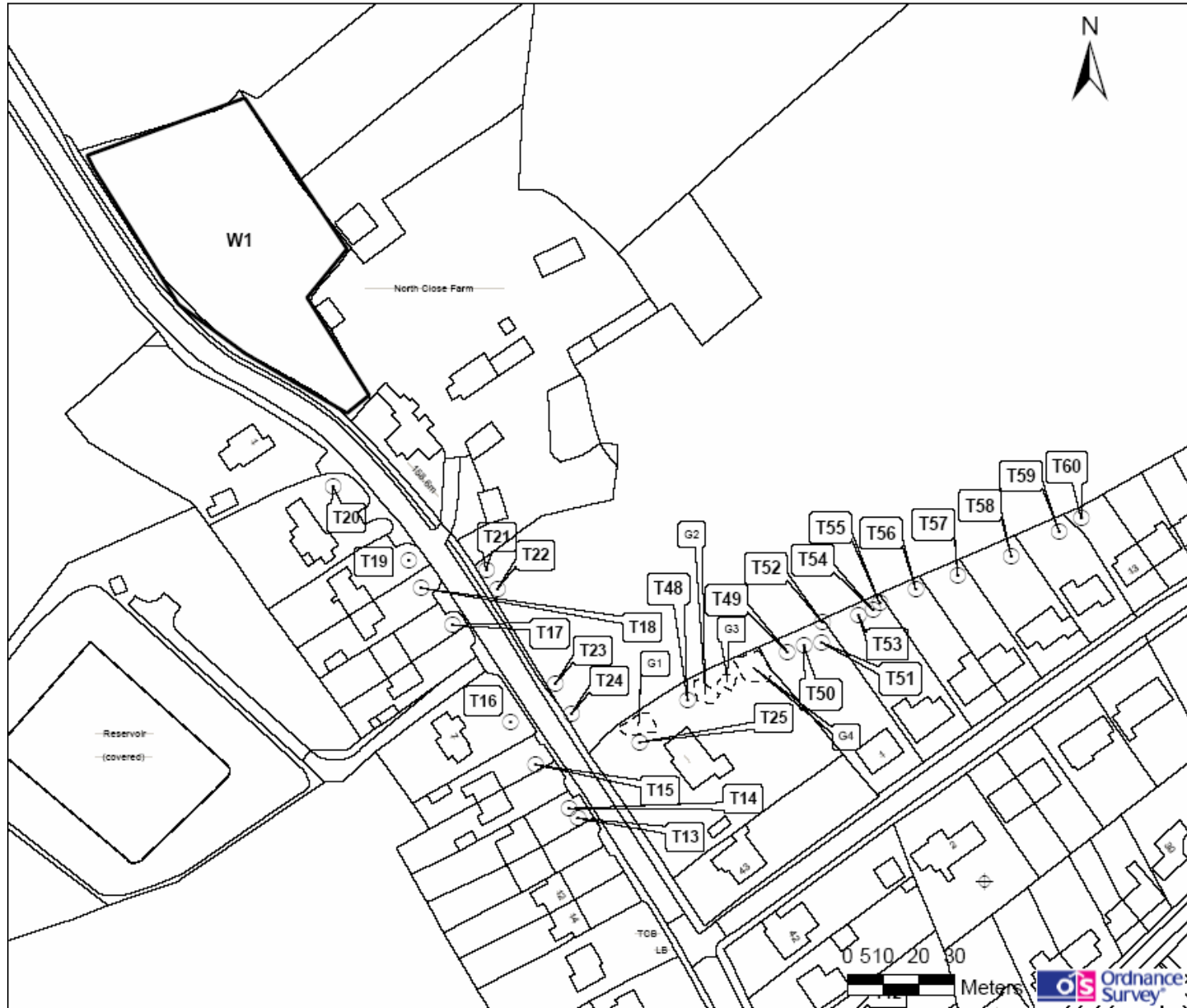
## **7. Conclusion**

- 7.1 Although many objections have been lodged to different aspects of the Order, and notwithstanding the omission of T21 and T22, Officers considered that the Order is both procedurally sound and that the Order is in the long term interests of landscape preservation.

**Background Papers**

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





SEDFIELD 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.....

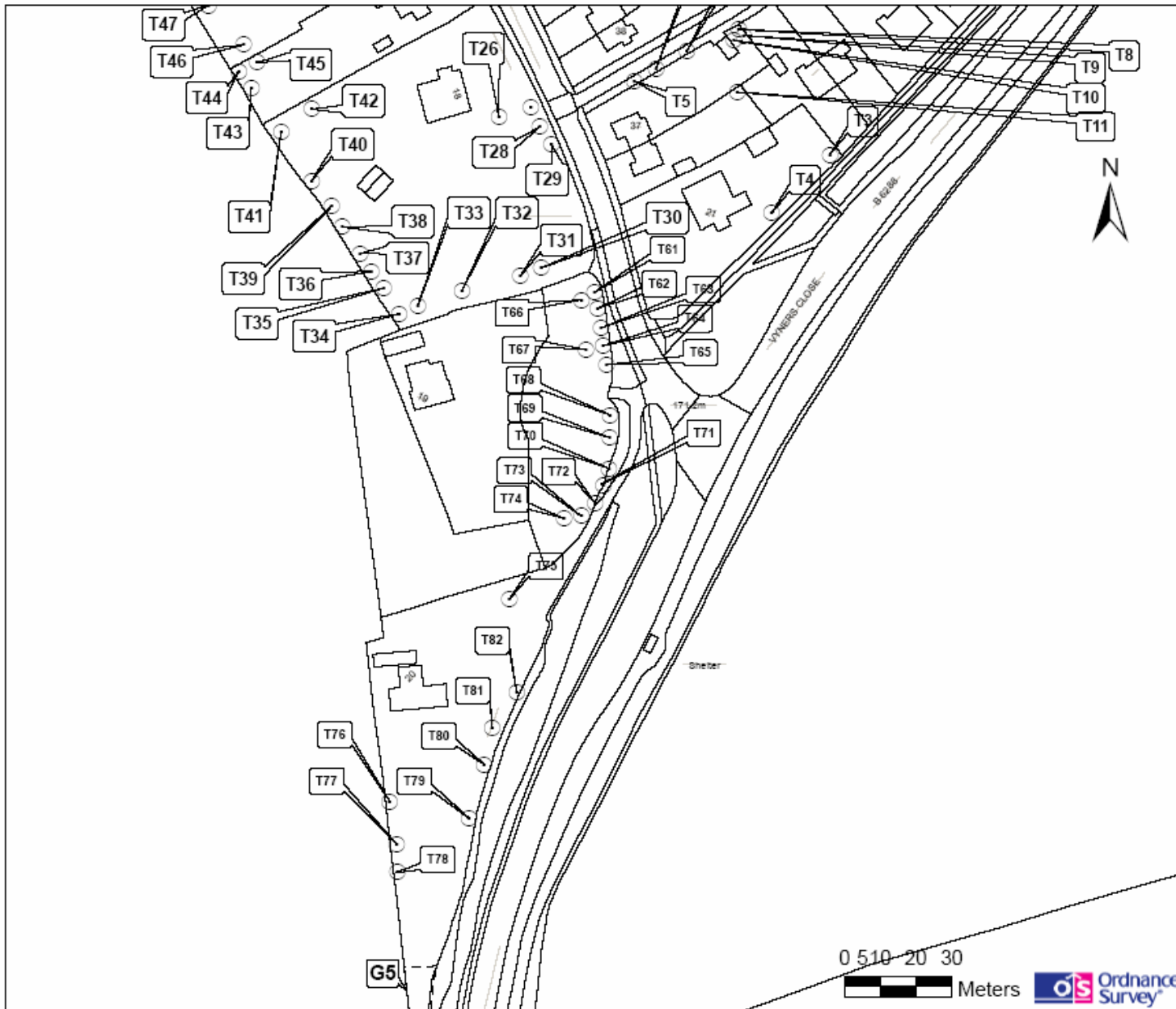
Authorised Signatory.....

Date.....

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

Ordnance Survey

Sedgefield



**SEDGEFIELD BOROUGH COUNCIL**  
**TREE PRESERVATION ORDER No 56/2008**

Location: North Close  
 Map 3of 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.....

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Glyn Hall, Director  
 Neighbourhood Services  
 Sedgefield Borough Council  
 Council Offices  
 Spennymoor  
 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 10<sup>th</sup> 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 9<sup>th</sup> October 2008. I did not receive notification until the 15<sup>th</sup> October, the material sent was franked 14<sup>th</sup> Oct. Although the order was raised on the 9<sup>th</sup> no public notices were placed until after 14<sup>th</sup> in the village.

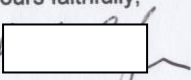
Can you please ensure that we receive notice in writing of the times and venue of the committee meeting regarding this matter, together with any information regarding my opportunity to present my concerns verbally to the committee.

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  
SPRINGTOWN  
CO DUNHART  
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, 11 NOV 2008  
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. ... scheme through the

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 10<sup>th</sup> 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 10<sup>th</sup> October 2008, wherein you state that the original order TPO 54/2008, dated 11<sup>th</sup> April 1008, would lapse on 14<sup>th</sup> October 2008. Given that the authority has a statutory six months to determine the order, I calculate the lapse date to be 10<sup>th</sup> 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 10<sup>th</sup> June 2008).

Cont...

3. The stated reasons for the need of a T.P.O. include: -
- a) 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.
  - b) 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.
  - c) 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

DEVELOPMENT CONTROL  
RECEIVED

11 NOV 2008

22, North Close,  
Kirk Merrington,  
Spennymoor,  
Durham,  
DL167HQ  
7<sup>th</sup> May 08

Dear Sir/Madam

Please find enclosed Objections under Regulation 4 Town and Country Planning (Trees) regulations 1999 in respect of a Tree Preservation order cited on the 11<sup>th</sup> of April 08 at North Close Spennymoor Durham, (TPO 54/2008).

This objection relates to one tree cited within the order, T11 as identified within the aforementioned documentation.

My property is currently bordered by five trees within the order, all within very close proximity on the West, South West boundary, T11 being included.

Whilst sympathetic to the rationale behind the need to preserve trees within the local I do feel it necessary to appeal in respect of T11 alone, due to the impact on my intentions for future development of my property. I am as stated sympathetic to the order and the trees cited within it with the exception of T11 and willing to carry out any necessary and justifiable amendments to future planning applications with respect to the other four trees cited on the boundary of my property.

It would appear that the current order has been implemented on the grounds that these mature trees provide a major landscape feature contributing to the character of the area.

That there has been a degradation of tree cover within recent years and should any protected trees be removed replacements will be planted.

That the protected trees stand at the gateways and main road corridors through the settlement and are largely contemporary with the built environment.

Large residential plots may be subject to developmental pressures and therefore the trees will provide design constraints for any new build helping to preserve the character of the settlement.

My concerns are as follows,

T11 is a mature Sycamore tree, which albeit important is not an especially rare in variety and could therefore be replaced readily by something which may be considered more appealing. I am willing to provide such a semi mature tree at my expense should this be necessary.

The current order was not in place when the necessary land registry checks were completed prior to moving into the property on January 18<sup>th</sup> 08 and therefore no indication was pre-empted when consideration was given to the purchase of the property which is the family home of three adults, inc my 74 year old mother, my five year old son and two 14 year old daughters who visit two nights per week.

The proposed development was to accommodate my elderly parent who is partially disabled and considered necessary for her wellbeing. My indication of development to the planning office was made 3<sup>rd</sup> of April 08 and the TPO order was placed on the 11<sup>th</sup> April. This would appear to be more than coincidence and could be construed as a deliberate attempt to scupper any planning application.

The current location of T11 is completely disproportionate to all the other trees cited within the order insomuch as they are all within 5 to 10 meters of any boundary with the exception of T25 which is approximately 12 meters away from the closest boundary point.

T11 is approximately 17m from the North West boundary to the un-adopted road commonly known as, "The Bumpy" approx 40m South West of North Close Road, in excess of 30m to the South East boundary of Viners close with no thoroughfare to the public and being totally landlocked by private gardens.

The amenity value of T11 is far lesser than all the other trees cited due to the current position. The South West aspect being partially obscured by the lower detached building of 21 North Close, leaving partial trunk and upper canopy visible. The North West aspect provides limited view from The Bumpy, being obscured by hedges and other trees not cited within the order but nevertheless in close proximity, leaving partial trunk and upper canopy only visible. From North close road, due to the distance to the boundary and the building of number 36 positioned between the two very little of any parts of the tree remain visible. It would therefore appear that T11 has been cited despite its location and appears wholly disproportionate in relation to the other trees within the order.

In addition T11 does not stand at the gateway of any properties and is not situated in a main road corridor as are the other trees within the order.

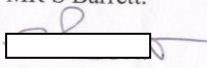
As previously indicated I do intend to apply for permission to extend my property in order to accommodate our needs and this may have an impact on the root system of T11, subject to a successful planning application. I am not asking for the tree to be felled but I am unable to foresee a development without the root system being effected by excavation in the area due to the natural incline of the plot. I have already engaged the services of an accredited Arbour culturist should a report be required but this will inevitably show disturbance to the root system in a quadrant of the root system radius.

In order to conclude, I do not wish to upset the equilibrium of the area and I will endeavour to preserve the tree concerned, however this must be balanced and proportionate in respect of my own family needs and it is for the aforementioned reasons that I am submitting this appeal for your consideration.

I will cooperate completely with any recommendations but I do fear that the limitations of a TPO on T11 will be so constricting that I am unable to pursue any feasible development and it is for this reason that I request your consideration in removing the protection order in respect of this tree.

I await your deliberations concerning this matter with interest.

Yours Faithfully  
MR S Barrett.



Please accept this as formal objection to the new TPO order placed in force

KIRKLEA

26 NORTH CLOSE

KIRK MERRINGTON

SPENNYMOOR

CO DURHAM

DL16 7HQ

DEVELOPMENT CONTROL  
RECEIVED  
4 - AUG 2008

TEL

Your ref: Roger Lowe.

30<sup>th</sup> July 2008

Dear Sirs,

**TREE PRESERVATION ORDER**

I thank you for your letter dated 22<sup>nd</sup> July 2008 and for the enclosures. I also thank Mr. Lowe for the information given to me when I telephoned him a week last Monday. I appreciated his explanation and the information about the present position concerning tree preservation in North Close.

My Wife and I have read the enclosures and the objections made by a number of residents. It is accepted that when a property owner believes that there is to be statutory interference of any sort, they may become very sensitive to it even if it would benefit the amenity and environment of the area.

The making of this TPO has certainly produced responses which indicate that there should be no interference on the basis that residents have always taken care of their trees over many years. I would not wish to comment on that. There

also seems to be confusion by some of the law relating to forestry when the enabling legislation is that relating to town and country planning under which this order has been made.

My Wife and I have lived in North Close for 25 years and we have during that time seen the character of the hamlet change with the degradation and felling of a number of trees.

These we believe to be:

2 from the land adjoining B6288 near to our property:

2 from the front garden of number 24 North Close:

1 from 25 North Close:

1 from 27 North Close:

4 from 38 North Close and the adjoining lane:

1 from outside 42 North Close:

A number situated on the pavements of Ridgeside - felled at the request of Ridgeside residents who objected to leaves on the pavement during the season of Autumn!

6 from the back of Ridgeside to the east of that area marked W3 on the Order plan, as well as several trees felled at W2, and finally several adjoining B6288 at the end of the settlement to the east.

I am surprised that my letter of the 15<sup>th</sup> April 2008 was not received by you and I have enclosed a copy and arranged special delivery of this letter.

Mr. G. Hall,

Would you please note that it appears that several people, who signed the petition in support of the TPO, have also signed the petition objecting to it!

Council Officer,

Spenny Moor.

My Wife and I whole heartedly support the making of this TPO and with the best intention on the part of the objectors, they may not always be the property owner. Ownership could change to those who may not have the same intention as to the care of trees.

The TPO will ensure that the amenity, beauty and natural environment associated with trees will remain in the future, for the benefit of the neighbourhood as a whole.

We did write to your authority many years ago requesting the making of a TPO because we felt then, the need to have some sort of protection and were informed that it would not be necessary as "the people living there were responsible people who would protect the trees". Alas, as can be seen, that has not been the case.

Please where possible, protect the trees and confirm the Order.

Yours faithfully,



T. Robson.

Mr. G. Hall,  
Director of Neighbourhood Services,  
Council Offices,

4 February 2009

Mr R Lowe  
Sedgefield Borough Council  
Council Offices  
Spennymoor  
DL16 6JQ

Dear Mr Lowe

Re: TPO 56/2008 – North Close, Spennymoor

I am writing on behalf of CLA member Mr Scurr of North Close Farm, to support his objection to the proposed Tree Preservation Order 56/2008 which will cover his woodland lying to the north of North Close Farm, designated as W1, and the individual trees designated as T21-24 lying to the south of North Close Farm. In so doing, I refer to 'Tree Preservation Orders: a guide to the law and good practice' as published by the Department for Communities and Local Government for the use of Local Authority Tree Preservation Officers.

The CLA represents approximately 1100 members across the North East of England who manage a large percentage of the land within the region, along with many of the trees and woodlands which provide distinctive local character across the region. The management of roadside trees has recently become a priority issue for many CLA members, following court rulings in two recent high profile legal cases, notably Poll v. Bartholomew. The CLA was one of the founding members of the National Tree Safety Group which is working towards providing concise guidance on managing tree safety for use by the courts, land owners, foresters, arboriculturalists and the general public.

W1 and the individual trees identified in the temporary TPO lie adjacent to the North Close – Middlestone Moor public road and are thus of particular concern to the owner. Mr Scurr has managed his trees and woodland judiciously over many years: pruning back from the highway, removing dead limbs and removing trees if they are deemed to pose a risk. The result is an attractive, mixed age and mixed species woodland which is enjoyed by many while posing a minimal risk to the road users.

Given this long term management, it would seem totally unnecessary to cover the woodland marked as W1 with a blanket Tree Preservation Order. Indeed, your own guidance states, under the heading **Expediency**:

'3.4 Although a tree may merit protection on amenity grounds it may not be expedient to make it the subject of a TPO. For example it is unlikely to be expedient to make a TPO in respect of trees which are under good arboricultural or silvicultural management.'

Thus the imposition of the proposed TPO on W1 would be out with your own departmental guidance. Furthermore, due to the safety issues associated with the road, it will be necessary to continue the existing management regime so potentially causing unnecessary work for the local authority and the landowner. I appreciate that Mr Scurr could continue with safety operations with no need of consent, but given the possible implications of contravening a TPO, prior notification would most likely occur.

The trees designated as T21 and T22 are semi mature lime trees adjacent to the public highway. Unfortunately, at some point in the past, these trees have both suffered damage to their bark, possibly caused by livestock. This has resulted in a significant percentage of the main stem dying and being subject to rot. Paragraph 3.2 of your own guidance states: 'in the Secretary of States view it would be inappropriate to make a TPO in respect of a tree which is dead, dying or dangerous.' Again, the TPO order appears to be made in contravention to your own guidance and even in contravention to the view of the Secretary of State. Given the recent court ruling in Poll v. Bartholomew, Mr Scurr is best advised to remove the trees designated as T21 and T22 in order to remove the risk of a road user being endangered.

I note that in some of your correspondence on this matter, you state "The trees have been assessed by a qualified and experienced arboriculturalist and in the local planning authority's opinion none of the trees are of poor quality." I do find it very strange that such obvious defects were not identified. I can only assume that you employed somebody with sufficient indemnity insurance.

I trust that these points will be taken into due consideration by the Committee at its meeting on the 6 February and that the proposed TPO will not include W1, T21 or T22.

Yours sincerely

A E Collingwood-Cameron  
CLA North East Director



Procedural Issues

**a.Consultation**

We can confirm that all those who should have been consulted have been consulted. This includes the owner of the track between 19 and 20 North Close. Letters and plans were sent to residents, site notices were posted and Spennymoor Town Council informed.

**b. Map annotation for T75**

The Borough Council use the most up to date version of the Ordnance Survey map and are not in control of *Mastermap* images. We do not therefore alter the maps on legal documents. Unfortunately the northern boundary of 20 North Close is not annotated on the map. The southern boundary of 19 North Close however, is annotated, and the tree is clearly beyond this boundary line. The Schedule within the Order describes the tree as a Black Pine and that it is within 20 North Close.

There are therefore three mechanisms to identify the location of the tree;

- a, the OS map
- b, the species
- c, the address

**c. T66 and T68 does not appear in the garden where shown on the plan.**

Annotated photographs have been taken of the trees in questions and discussed with the landowner. The landowner claims that there is a significant discrepancy between the actual location and the location on the plan. The LPA are advised by central government to; prepare “the map... sufficient to give a clear indication of the position of the tree..” The LPA are not required to carry out a topographical survey of private land before serving an Order as this is clearly impractical.

In view of the map scale at 1:1000 the location of these trees is considered sufficient along with their species to clearly identify the trees to any casual observer.

A High Court decision considered this matter. *Robinson v East Riding of Yorkshire 2002* concluded that;

*“ No doubt it is desirable that an up to date plan should be used if possible, but what the Regulations require is that the map ‘shall indicate the position of the trees’. Provided that the plans attached to the order are sufficient to achieve that objective, it is of no consequence whatsoever that they may be outdated and/or inaccurate in other respects.”*

**d. A new Order is unnecessary**

The decision to allow the 54/2008 Order to lapse and issue a new Order was taken by the Assistant Borough Solicitor. The Order is a legal document and must be clear about which trees are protected. Because of the amendments already made as a result of objections to Order 54 and the possibility that Members would make further amendments, the continuation of Order 54 was felt not to be in accordance with best practice.

The making of a new Order was never a preferred option but due to the Borough Councils wish to accommodate as many of the objections as possible and the protracted nature of the case, procedurally we had no other course of action.

**e. The trees are already in good arboricultural management**

Whilst some trees are at present in good management, some or not (see 5.5). Even those under such good management are prone to change. 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 them. Hence the discretion afforded to local planning authorities to serve precautionary orders. Central government does recognise that large landowners and public bodies ie National Trust will usually have qualified and experienced staff to provide long term management of trees and that precautionary orders are probably not appropriate in these cases. *Armitage v South Oxfordshire DC* 1998 considered an objection to an Order on the grounds that the trees were already under good management (a Woodland Grant Scheme) but declined to quash the Order as this provided no long term protection.

**f. A third of woodland 1 is rear garden delineated by a hedge.**

The area of land in question is clearly not in horticultural use and both aerial photographs and ground level photographs show the area in dispute as wooded. The hedge referred to is outside the area protected by the Order.

**g. The trees do not represent a skyline feature**

Photography shows that the trees are on the skyline viewed from Spennymoor.

**h. Selection of the trees arbitrary**

The trees selected for inclusion in the Order were chosen following central Government guidance;

- a. The trees are visible to the public
- b. The trees have a reasonable to long life expectancy
- c. The trees provide good amenity

**i. Poor quality trees not worthy of a TPO.**

The trees have been assessed by a qualified and experienced arboriculturalist and in the local planning authority's opinion none of the trees are of poor quality.

**j. The Order is necessary to restriction development (*Mr Marley*)**

The regulation does not make this statement. The wording is;

*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.*

TPO's do not restrict development per se. They do however safeguard trees against pre development felling and secure their inclusion in the design process. Rarely do TPO's alone result in refusal of planning consent.

#### **k. Use of Woodland designation.**

The use of the woodland designation only applies to one farm woodland and is not now applied to any areas in formal garden use. The local planning authority resurveyed and amended Order 54 and finally allowed it to lapse, specifically as a response to objections to woodland designations.

#### **l. Order will take away control of garden**

Only the major landscape scale trees are protected by the Order. All other annual works can take place without reference to the local planning authority.

#### **m. Future financial implications of application.**

Application for works to protected trees has been free of charge since legislation created TPO's in 1948. In contentious cases applications to fell trees may require supporting statements from a suitably qualified tree professional. In practice any inquiry is dealt with informally without extra costs.

The regulations are governed by Parliament and the local planning authority must act within any future framework given to it.

#### **n. Designation of woodland stops entry into conservation scheme.**

Following consultation with DEFRA, DCLG and Natural England none of these bodies are aware of any limitations on entry into 'conservation schemes'.

Woodland TPO's allow works as long as the works follow good forestry practice. This Order is primarily in place to protect the public amenity provided by the trees and to prevent erosion of the woodland area.

Other issues

#### **o. Inclusion of Sycamores**

Trees are protected for their amenity value regardless of species. We are not here considering forest ecology but the value to the landscape of the trees in the Order. Sycamore is strongly represented and, in fact, the most commonly protected tree in the Borough as it is the most common species.

#### **p. T62 is too high and requires topping**

Good arboricultural practice should be based on sound observation and the local planning authority would assess any application to reduce the height based on the evidence supplied. If it is proved that the tree suffers from structural weaknesses than the local planning authority would have no objection to works being carried out.

#### **q. T61 in poor condition**

T61 has a poorer canopy condition than T66 when they are seen together. The loss of T61 would not materially affect the amenity provided by the roadside planting and Members may choose to omit this from the Order.

**r. T67 (Monkey Puzzle) can not be seen from a public place.**

Photographs show that it can be seen from the footpath on both sides of the road.

**s. No inspection of the ground conditions.**

The local planning authority is not required to examine ground conditions. Should the landowner judge that trees need to be felled due to observed changes in land levels or rooting patterns then this would be material to an application to fell.

**t. Number of trees protected excessive.**

We agree that a large number of trees are being protected in this Order but this reflects the number of good specimen trees in the village core.

**u. Other Monkey Puzzles in the village are not protected**

The Monkey Puzzle, T67, is the best specimen and not disfigured. T67 stands in a sustainable location rather than a small modern residential garden. The prospect of T67 providing long term amenity is therefore very good.

**v. Overhanging branches from T32 causes sap damage.**

Sap is a 1% sugar solution. It can not damage asphalt. If sap could indeed damage asphalt then it would not be used by the Highways authorities.

**w. The neighbour or owner is prevented from pruning a protected tree**

Either party may apply to prune back the tree. Application is free.

**x. Delay since the dissolution of the July meeting unacceptable.**

The delay was as a result of not being able to gain immediate access to all the properties affected by the Order.

In an effort to move the issue forward we had to survey properties without entering them (although the LPA do have powers to enter the land). The delay on our behalf, was unavoidable.

**y. Five day delay between Order 54 lapsing and Order 56 being received.**

It is not considered that the position of local residents has been prejudiced in any way as a result of the delay. Indeed residents have been afforded additional time to make their views known. Furthermore, a letter of objection which was not included in the original report for procedural reasons has now been included following discussions with the objector who was concerned that his letter had not been referred to in the report.