

Grounds for Appeal against Tree Replacement Notice (Tree Preservation Order No. 34/1978 at Haytop Country Park, Alderwasley Park, Whatstandwell, DE4 5HP.

Preliminary

The Tree Replacement Notice was served by Amber Valley Borough Council (AVBC) under Section 207 of the Town and Country Planning Act (T&CPA) 1990 on 27th January 2021. The Notice concerns the duty to plant trees under Section 206 of the T&CPA at Haytop Country Park after being charged for felling 121 protected trees on days eligibly between 17th March 2017 and 23rd March 2017.

As it stands there are currently a number of planning matters left unresolved which concern the site's lawful use, in particular the type of caravans (touring caravans or static caravans) that can be stationed on site. There are currently three planning appeals pending consideration which relate to a Lawful Development Certificate and two Enforcement Notices for Use of Land and Operational Development (lead case ref: APP/M1005/C/19/3226961). These were the subject of a Public Inquiry between 26th January and 3rd February 2021 and we hope a decision on these will be issued in the coming weeks. The outcome of these appeals will have an overriding impact on the site's tree replanting, as it will provide planning certainty as to what the lawful use of the site is and its internal layout thereafter. From this, a tree planting scheme can be designed not only to fit but to complement this.

Whilst the Appellant acknowledges they are under an obligation to plant trees as a replacement for those unlawfully cut down, they do not agree with the specific steps required by the Notice. Therefore, the Appellant makes this appeal on the following grounds:

FACTS TO SUPPORT GROUND B under Section 208(1)(b):

that the requirements of the notice are unreasonable in respect of the (i) period or (ii) the size or (iii) species of trees specified in it

In terms of the time period subject to this Notice, the Appellant will submit that the Notice does not take into account that some of the proposed replanting position of the trees, as illustrated on the plan attached to the Notice, are actually located upon or extremely close to caravan bases and other infrastructure which is currently present on site. This infrastructure is largely associated with the recent redevelopment works of the site. Should the appeal against the Tree Replacement Notice be dismissed and the Appellant be required to replant trees in the location shown on the Plan attached to the Notice, then much of this Infrastructure would need to be removed to accommodate this. The time for compliance (12 months) as stated in the Notice is unreasonable as it does not allow sufficient time to remove the necessary infrastructure to accommodate some of the tree replanting. Therefore, in the event the appeal against this Notice is dismissed, the Appellant will submit that the time of compliance is extended from 12 months to 18 months to allow for the both the removal of the necessary infrastructure and then to enable the replacement trees to be planted during the suitable planting season which is between end of October and end of March.

Notwithstanding the above and as outlined in the preliminary section of these Ground for Appeal, much of the infrastructure referred to above is subject to the pending planning appeals. The outcome of these appeals will provide clarity in terms of type of caravan and layout of the caravans and their bases across the site going forward. The Appellant will therefore submit that the issuing of this Notice was premature and a more logical approach is to allow the planning appeals to be conclude, which will provide planning certainty of the site and would then allow for the replacement tree planting to be designed not only to fit but to complement the site's layout and provide long term value.

The size and species listed on the Design Schedule attached to the Notice are unreasonable on the basis that the Appellant was not consulted and had no input into the compilation of this schedule. It is evident that the species were selected by largely using those tree species felled, as well as those species remaining and/or suitable for the location, woodland structure, biodiversity ad resilience benefits. The Appellant will submit that consultation between the two parties could have enable the production of a more appropriate Design Schedule. Without this consultation it is the Appellant's position that the serving of this notice was premature.

To resolve the Appellant will submit an alternative list of species and size to be considered, in line with the alternative locations as proposed under Ground D. This Appellant will also submit that without this consultation the serving of this notice should be treated as premature.

FACTS TO SUPPORT GROUND C under Section 208(1)(c):

that the planting of a tree or trees in accordance with the notice is not required in the interests of amenity or would be contrary to the practice of good forestry

The Appellant will submit details in relation to the proposed positioning of the trees and consider the suitability of their species and/or location in relation to practice of good forestry. For example (not limited too), the Appellant will assess whether the trees suggested by the Council can co-exist effectively in the locations proposed and whether there has been any consideration given to light demanding species within the specific location. A number of trees are required by the notice on land which has roadways or hardsurfaces. Planting in those locations is not required and amenity is better served by planting trees close to those places.

FACTS TO SUPPORT GROUND D under Section 208(1)(d):

that the place on which the tree is or trees are required to be planted is unsuitable for that purpose.

The Appellant disagrees with the location the trees are required to be planted as defined by the Plan attached to the Notice.

The T&CPA allows for the amenity, historical significance and/or habitat that an individual, group, woodland or in certain circumstances, areas of tree to be preserved by a Tree Preservation Order (TPO). In this instance, the woodland in which the site is located is covered by Tree Preservation Order (TPO) ref: 34/1978 which dates back to 1978 and contains two distinct areas. Area W1 - the area in which the trees were felled and the replacement trees are required to be replanted, is a woodland order designation and covers all trees no matter what age. Area A1 - is an area order designation and only covers trees present at the time of the Order confirmation (i.e. 1978).

Under Section 206(1) of the T&CPA, when replacing trees in a TPO, there is a general obligation to plant another tree 'in the same place'. However, in respect of a woodland setting it is sufficient to plant the same number of trees 'on or near the land on which the trees' stood or 'on such other land as may be agreed between the local planning authority and the owner of the land' (Section 206(3) of the T&CPA).

The area in which the trees were felled and now the subject to the replanting of this Notice, is located entirely within Area W1, which is a Woodland Order. It is therefore permissible to replant in accordance with Section 206(3) and not simply Section 206(1) which seems to be the approach used by the Council.

Whilst the Appellant accepts that there is an obligation to replace the felled trees, they will however contend, in accordance with Section 206(3), the proposed locations of the replacement tree (as defined by the Plan attached to the Notice) are unsuitable on this basis alone. The Appellant will submit that just because a specific tree(s) was sited in a particular location within a woodland previously, does not necessarily mean this is the most suitable location of replanted trees going forward. It is appropriate to plant in area to (a) work around the layout of the lawful caravan site and (b) to secure a properly managed woodland with appropriate canopy cover and succession of trees. The Appellant submits that it would have been much more appropriate to have a site meeting and finalise positions rather than plant to previous positions where the conditions may not be entirely favourable.

Failure to consult

It will be submitted that the approach adopted by the Council prior to issuing the Notice was not in accordance with the guidance set out in the Planning Practice Guidance (PPG) (Paragraph: 155 Reference ID: 36-155-20140306) which says, that prior to serving a Tree Replacement Notice, "*...if the local planning authority believes, in the circumstances, that replacement trees should be planted, it should first try to persuade the landowner to comply with the duty voluntarily. The authority should discuss the issue with the landowner and offer relevant advice*".

In failing to have regard to relevant government guidance on consultation the notice is therefore invalid.

The Appellant received no consultation nor a request to replant prior to the issuing of the Notice. Instead the Council identified the position to replant the trees by using aerial photography and site photograph taken by the Council and Forestry Commission employees shortly after the felling took place. This was then followed up by a site visit carried out by the Council's Trees and Conservation Officers on 20th October 2020 to establish the replant conditions, regeneration and canopy light levels. The Appellant did not receive an invitation to attend this site visit.

Originally a tree replacement notice dated 11 January 2021 had been issued shortly before the enforcement/CLOPUD inquiry was due to take place. There had been no prior warning that the Council wanted replacement trees planted, let alone which trees and where. In giving evidence on the first day of the inquiry, 26 January 2021, the Appellant's planning witness was asked about that Tree Replacement Notice and referred to the failure to consult the Appellant in breach of the PPG. No heed was taken of that warning when the Council chose to issue the present notice the following day.

The Appellant will submit that had the appropriate consultation steps been undertaken by the Council, both parties could have come to a mutually agreeable solution as to where the replanted trees will be located. To assist discussions during the hearing, the Appellant will seek to prepare an alternative Tree Replacement Plan with consultation of the Council in an attempt to resolve matters.

The outstanding appeals

It is also submitted that three appeals (relating to a Lawful Development Certificate and two Enforcement Notices for Use of Land and Operational Development) are still pending consideration by the Planning Inspector. It is likely that a decision regarding this will be issued during the course of this Tree Replacement Notice appeal. The outcome of these appeals will provide planning certainty in terms of type of caravan and layout of the site going forward. Once this certainty has been established the tree planting can be designed not only to fit but to complement the site and provide long term value.