



Appeal Decision

Hearing and site visit held on 24 August 2023

by John Felgate BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State for Levelling Up, Housing and Communities

Decision date: 04 March 2024

Appeal Ref: APP/TRN/M1005/8424

Land at Haytop Country Park, Whatstandwell, Derbyshire DE4 5HP

- The appeal is made under regulation 18 of the Town and Country Planning (Tree Preservation) (England) Regulations 2012 against a Tree Replacement Notice (TRN).
 - The appeal is made by Haytop Country Park Limited against the issuing of the notice by Amber Valley Borough Council.
 - The notice was issued on 27 January 2021.
 - The requirements of the notice are to plant 100 replacement trees, of the species and sizes specified in the Design Schedule (Appendix B to the TRN), and in the positions shown on the Design Plan (Appendix C to the TRN).
 - The period for compliance with the TRN is 12 months, from 25 February 2021.
 - The appeal is proceeding on the grounds set out in section 208(1) (b), (c) and (d) of the Town and Country Planning Act 1990.
 - The relevant Tree Preservation Order (TPO) is the Amber Valley District Council TPO No 34/1978, which was confirmed on 22 January 1979.
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DECISION

1. The appeal is allowed in part, and the Tree Replacement Notice is varied as set out in the attached Schedule of Variations. In all other respects the Notice is upheld, and the appeal is dismissed.

PLANNING AND LEGAL BACKGROUND

The site

2. Haytop Country Park is a caravan site, set within the Shining Cliff Woods, on the steeply sloping western banks of the River Derwent. The northern, lower section of the site is heavily wooded, while the southern part is more open. The woods form part of the parkland formerly associated with Alderwasley Hall, a listed building (LB), and are included within the Alderwasley Conservation Area (the CA). The whole of the appeal site and the surrounding area lie within the defined Buffer Zone of the Derwent Mills World Heritage Site (the WHS), and within a Special Landscape Area (SLA), designated in the Amber Valley Local Plan, adopted in 2006. The site also adjoins a designated Site of Special Scientific Interest.

The planning permissions

3. In March 1952, planning permission was granted by Derbyshire County Council for the use of 7.5 acres of land at the appeal site for the siting of 30 mobile dwellings and one wooden bungalow. In June 1966, permission was granted for an extension of the site to 60 caravans, for seasonal and towing use. A

caravan site licence, under the Caravan Sites and Control of Development Act 1960 (the CSCDA), was granted in 1968. Thereafter, for many years, the site was apparently operated in accordance with the provisions of these permissions and the site licence.

Unauthorised works, Stop Notice, BCN and injunctions

4. In 2016 the site was acquired by the present appellants, Haytop Country Park Limited (HCPL), and soon after, various works of operational development commenced on the site. Those works included the re-contouring of the land to create a series of levelled terraces supported by gabion retaining walls, the laying of concrete bases, wooden decking, and a new internal roadway, the installation of services and CCTV. It is not disputed that these works were intended to facilitate the provision of twin-unit 'park homes' throughout the site.
5. The works were held to have been carried out in breach of planning controls, and this resulted in the Council serving a Stop Notice and a Breach of Condition Notice, in September and October 2017. Following this, the Council successfully applied on two occasions for injunctions against further works, and these were granted in January and October 2018.
6. Notwithstanding this, further ground works are said to have been carried out subsequently, in late 2018 and early 2019.

Unlawful felling and prosecution

7. In March 2017, 121 trees on the site were felled. This felling was contrary to the TPO. A further two trees were also felled in August of that year. I am aware that the appellants maintain that these works were based on professional advice, although it is now accepted that that advice was faulty.
8. In December 2017 and March 2018, the Council brought prosecutions against HCPL for these breaches of the TPO, which resulted in convictions and fines against the company.

Enforcement Notices and Lawful Development Certificate

9. On 15 March 2019 the Council served two Enforcement Notices (ENs). The first related to the use of the land for stationing residential caravans other than trailer-type caravans; and the second sought to enforce against the operational development that had taken place. In the same month, an application was made by HCPL for a Lawful Development Certificate (LDC) for the stationing of 60 static caravans. The LDC application was refused.
10. HCPL's appeals relating to the ENs and LDC were the subject of a public inquiry in January and February 2021. In a decision dated 20 August 2021, the LDC appeal was allowed, and the EN relating to the use of the land was quashed. The resulting LDC certifies that the site may be used for the siting of 30 static caravans for permanent residential occupation, and 30 static caravans for 12-month holiday occupation.
11. However, the appeal relating to the operational works was dismissed, and the EN upheld. The main reasons related to the harm that the unauthorised works were found to have caused to the settings of the WHS and Alderwasley Hall, and to the CA and SLA.

12. The requirements of the EN include:

- removing all concrete bases, hardstandings, gabion retaining walls, wooden decking structures and brick skirtings;
- removing the new roadway;
- and re-profiling the land to restore it to its previous levels and condition.

13. A subsequent legal challenge to the Inspector's decision was rejected by the High Court in July 2022. The compliance period for the EN expired in January 2023.

The site licence

14. In August 2018 HCPL made an application for a new caravan site licence under the CSCDA. Following a reference to the First Tier Tribunal, a new licence was granted on 26 April 2022, subject to conditions. HCPL appealed against certain of these conditions. The Tribunal's decision was initially issued in May 2023, and subsequently amended twice, the final amended decision being issued on 6 July 2023. Condition 2 of the site licence, as varied by the Tribunal, now states that the site shall be occupied by not more than 18 caravans, to be sited on the pitches numbered 1, 2, 8, 9, 10, 11, 12, 13, 14, 22, 23, 23A, 28, 30, 31 and 32. The decision makes it clear that these pitches were those that were considered by the Tribunal not to be likely to conflict with the planting of replacement trees in accordance with the TRN.

15. The terms of the site licence also include Condition 3, which requires the site to be maintained and managed in accordance with various 'standards', numbered 1-19. Standard 3 imposes various requirements in relation to trees, and sets out minimum distances for the planting of new trees in relation to caravan bases, roads, structures and other infrastructure. This standard was amended by the Tribunal to add the word 'normally'. With a few minor exceptions, the details of the remaining standards are not before me.

16. At the hearing into the present appeal, it was reported that an application had been made by the Council, for permission to appeal against the Tribunal's decision. However, I have no further information regarding this appeal. In making my decision, I have proceeded on the basis that the site licence remains in force.

The Tree Preservation Order

17. As set out above, the Amber Valley District Council TPO No 34/1978 (the TPO) was made in 1978 and confirmed in 1979. The Order was therefore in place well before the date at which the site was acquired by HCPL. It covers the whole of the Haytop Country Park caravan site, together with other adjoining land, although not the whole of the Shining Cliff Woods. The trees that were felled at the site all lay within the area designated as Woodland W1, described as a woodland of mixed hardwoods.

The Tree Replacement Notice

18. The Tree Replacement Notice (the TRN), which is the subject of this appeal, was issued in January 2021. The Notice records that 121 trees were unlawfully cut down and destroyed in 2017, and that accordingly HCPL, as the owner of

the land, is under a legal duty to plant replacement trees. That duty arises under Section 206 of the Town and Country Planning Act 1990 (the 1990 Act).

19. The TRN further notes that, whilst some 20 new trees had been planted since the felling, much of this planting was considered to be of poor quality, and had been carried out to an inadequate standard. Some of the new planting also involved unsuitable species, and some was outside the TPO area; and in any event much had since died or become damaged. For these reasons, the planting carried out by HCPL since 2017 was not considered to fulfil the duty under Section 206, and had been disregarded for the purposes of the TRN.
20. The requirement set out in the Notice is to plant the number, species and size of trees as shown in Appendix B, entitled Design Schedule, at the places shown at Appendix C, the Design Plan. The latter indicates 100 numbered locations, all within the area of Woodland W1. The Schedule identifies each of these 100 locations by means of individual grid references, and indicates the required species and planting size for each new tree. The species required comprise a mixture of 11 common native woodland types. In the majority of cases, the required size is 'standard', with the remainder being whips.

The grounds of appeal

21. The grounds on which an appeal against a TRN may be made are set out at Section 208(1) of the 1990 Act. In the present case, the appeal is made under three of these grounds:

Ground (b): that the requirements of the notice are unreasonable in respect of the period, or the size or species of trees, specified in it;

Ground (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; and

Ground (d): that the place on which a tree or trees are required to be planted is unsuitable for that purpose.

22. With regard to ground (c), the matters argued by the appellants in relation to amenity and good forestry are directed specifically at some of the individual locations for replanting, rather than at the TRN as a whole. As such, the matters raised under this ground are closely related to those arising under ground (d), and I have therefore considered these two grounds together.
23. In the case of ground (b), it was confirmed at the hearing that the objection under this ground is concerned primarily with the period for compliance. In so far as the submissions made under this ground also touch on matters of size and species, it seems to me that these are again directed at specific locations, and as such, these are closely interconnected with the objections under grounds (c) and (d); so again it seems convenient to consider all of these location-specific matters together.

REASONS FOR DECISION

Objections to the planting locations, size and species (Grounds b, c and d)

Legal submissions – the effect of S.206 on replanting locations

24. Section 206(1) of the 1990 Act provides that if a tree which is subject to a TPO is cut down, it shall be the duty of the owner to plant another tree at the same place. In the case of woodlands, S.206(3) provides that the replanting may take place on or near the land on which the felled trees stood, or on such other land as may be agreed with the planning authority, and in such places as may be designated by the authority.
25. I fully accept the appellants' submission that, in the present case, the words 'at the same place' are capable of meaning the area designated in the TPO as Woodland W1. It follows that, in order to comply with S.206, it is not necessary for replanting to take place in exactly the same spot as where each felled tree once stood. On this basis, I agree that the legislation does not prevent me from considering variations to the planting positions specified in the TRN, provided that the alternative locations fall within W1, and within the scope afforded by S.206 in all other respects.
26. Equally, I can see nothing to support any suggestion that any variations to the planting locations are necessary for compliance with S.206, or with any other part of the Act. I have approached my consideration of the objections on this basis.

Objections to specific locations (Grounds b, c and d)

27. In the light of all the submissions made, it seems to me that the main issue in relation to the replanting locations is whether the positions required by the TRN are suitable for tree planting, and whether the sizes and species required are suitable for those locations, having regard to the interests of amenity and good forestry practice, with particular regard to the following:
- the effects on the existing development carried out on the site;
 - any effects on other planned development;
 - the proximity of overhead power lines and cables;
 - the relationship to existing tree canopies;
 - and any problems relating to compacted ground.

Effects on existing built development

28. In a number of cases, it is clear that planting new trees in accordance with the TRN would conflict with the positions of some of the structures and works that have been built or carried out on the land since 2016. Planting in these positions would therefore require those structures and works to be removed or modified. These cases, all within the southern section of the site, include the following.
29. **TRN positions Nos 3, 4, 7, 37 and 84:** All of these planting positions fall within the footprints of some of the new concrete bases that have been laid (on plots 5, 26, 27, 29 and 34). In order to plant trees in these positions, it would

- be necessary for these existing bases to be dug out, and either relocated or removed altogether.
30. **TRN positions 1, 2, 6, 10, 13 and 39:** All of these positions lie on or directly adjacent to some of the gabion retaining walls that have been constructed (within plots 3, 6, 7, 25 and 28) to support the new terraced levels that have been created. For trees to be planted in these places, these sections of wall would need to be taken down and, as a minimum, rebuilt in different positions; and further earthworks would be needed, to adjust the ground levels to suit those new positions.
31. **TRN position 40:** This is within the line of the new road that has been built across the site (between plots 1 and 2), and planting a tree in this position would require part of this existing road to be taken up, and either diverted or omitted.
32. **TRN positions 1, 2, 5, 8-10, 33-35, 36, 38, 39 and 41:** These planting positions are close to, albeit just outside, either existing bases (on plots 3, 4, 6, 25, 27, 29, 30, 33 and 34), or the new road, so that planting trees here would risk incurring damage to these structures in the future as the trees grow. Some of these positions would also conflict with the minimum planting distances specified in the site licence.
33. However, in all of these cases, the bases, roads, walls and structures that would be affected were built unlawfully, being constructed without the necessary planning permission, and on land that had been re-contoured and levelled into terraces also without permission. The Enforcement Notice now in force requires all of these structures to be removed, and the land to be restored to its former levels and condition. The Council's stated position is that they intend to seek full compliance with the EN requirements, in all but a few cases. If necessary, the Council has the legal right to secure such compliance, irrespective of whether the land owner is willing to cooperate. When the EN is complied with, the structures that currently present an obstacle will then all be gone. In that case, the conflict with the existing built development will be overcome, and there will be nothing to hinder replanting in the positions specified in the TRN.
34. In the case of tree positions 6, 9 and 40, the plots nearest to these planting positions are amongst those now covered by the caravan site licence granted under the CSCDA, and these licensed plots are capable of benefitting from permitted development (PD) rights¹, in respect of any works that are required to comply with the licence. However, in the absence of any further details of the licence terms, there is no evidence as to which types of works, if any, would be covered by those PD rights in this particular case. Nor does it appear that any certificate of lawfulness has been granted for any such development. In any event, as far as I am aware, the licence does not make any existing unlawful development lawful, and therefore the EN still has effect in relation to these plots, just as it does in relation to the southern area as a whole. Consequently the exercise of any PD rights would not avoid the legal requirement to comply with the EN, including the reinstatement of the original

¹ Under the Town and Country Planning (General Permitted Development) Order 2015 (the GDPO): Schedule 2, Part 5, Class B

- ground levels. In all the circumstances, it seems to me that the potential availability of PD rights as a fallback carries little weight.
35. In the light of all the above, I see no reason to doubt that that compliance with the EN can be secured, and is likely achieved, and that as a result, the existing structures that conflict with the TRN's replanting positions will be removed. In any event, as far as the present appeal is concerned, the existence of the EN, and the Council's power to require compliance with it if they so choose, must in my view carry substantial weight. I have considered the appellants' alternative proposals in the light of this initial finding.
36. The alternative planting positions proposed by the appellants are shown on their Figures 824 and 825, and Figures 900 and 901. In all the cases listed above, these alternatives would avoid or reduce the conflicts with the existing unlawful structures and works that arise from the requirements of the TRN. If the appellants' planting positions were adopted as variations, it would then be possible, physically at least, to carry out the required planting without disturbing any of the existing bases, roads, walls or ground levels. That in turn would also allow, in theory at least, for the possibility of an alternative solution to be negotiated, in which the existing built development could be allowed to remain in situ, and the altered land levels to remain as they are now, alongside some form of agreed plan regarding future development and mitigation. Such an approach would have the potential for significant savings, in terms of costs, resources and timescale. And in the absence of any contrary evidence, I am inclined to agree that, in the long term, the effects on views from across the valley would probably be little different, compared to the planting positions specified in the TRN now. It is therefore easy to see why the appellants have chosen to focus their case on the possibility of a pragmatic approach along these lines, even though little progress appears to have been achieved towards any agreement of that kind.
37. But all these matters go well beyond the scope of the present appeal. The appeal is concerned with the TRN alone, and not with any proposals for development, other than that which already has planning permission. It is not open to me to reconsider the pros and cons of the EN, nor can I pre-empt any future decisions about further development. Rather, my decision turns on the merits or de-merits of the TRN itself, and it is this issue with which I have concerned myself.
38. For the reasons already explained, I am satisfied that once the EN has been complied with, there will no longer be any reason why the existing development on the site should continue to create any physical impediment or other practical difficulties with regard to carrying out the replanting required by the TRN. None of the evidence presented points to any other reason why this group of planting positions should not be regarded as suitable for the purpose. I accept that the positions specified in the TRN may not be the only ones that could have been chosen, but this does not make these positions unsuitable.
39. I conclude, with regard to this ground of objection, that the positions identified above are suitable for the planting of trees as specified, and that in this respect the requirements of the Notice are reasonable. I therefore find no reason to vary the Notice in response to this ground of objection.

Effects on other planned development

40. In a number of other cases, it appears that planting in accordance with the TRN would conflict with roads, bases or other structures which are not yet built, but which are planned by the appellants as part of the overall scheme of further development that they would wish to pursue for the site, as again shown on Figures 824 and 825. These cases include the following.
41. **TRN positions Nos 42, 49, 51, 53, 54, 63, 64, 68-71 and 89:** These planting positions would conflict with the proposed locations of new caravan bases, deckings, or hardstandings that are planned by the appellants in the as yet undeveloped northern part of the site (within proposed plots 15, 16, 17, 18, 19 and 21).
42. **TRN positions Nos 44, 47 and 52:** These positions would conflict with the intended path of one of the new roadways that is planned by the appellants through the northern part of the site (serving proposed plots 18, 19 and 20).
43. **TRN position No 14:** This would conflict with the intended line of the as-yet unbuilt section of road that is intended to serve part of the southern section of the site (to the front of plots 8 and 9).
44. All of these proposed planting positions fall within the area that has planning permission for use as a caravan site, under the 1952 and 1966 consents, and the LDC granted in 2021. However, the construction of roads, bases and other structures in connection with that use would comprise operational development, for which planning permission is required. In the present case, none of these planned developments, which would be affected by the planting positions identified above are authorised by the existing permissions or the LDC.
45. In the case of planting position T14, the adjacent bases Nos 8 and 9 are licensed, and therefore may potentially benefit from PD rights. But as already explained, there is no evidence that a road in the position shown in Figure 824 is required to comply with the licence, or that the building of such a road would therefore be PD. And in any event, there is also no evidence that planting a tree at position T14 would prevent the provision of vehicular access to the plots in question, in some other way. As far as I am aware, there is no suggestion that PD rights are relevant to any of the other planting positions in the group identified above.
46. The appellants' desire to make full use of the appeal site, within the scope of its existing permissions and certificate, and to improve the site's facilities where possible, is clearly not unreasonable. But as things stand, the realisation of that aim seems contingent upon either securing a further planning permission, or demonstrating that any such development would fall within the scope of PD rights. Moreover, where planning permission is needed, any application would have to be considered in the context of its potential impacts on the relevant heritage and landscape assets, as well as any other planning considerations. There is therefore no certainty that the necessary permission would be forthcoming. Nor is there any evidence regarding any relevant PD rights. In all the circumstances, it seems to me that the appellants' proposals for further development cannot carry weight.
47. There is no suggestion that compliance with the TRN's requirement to plant trees in the positions identified above would prevent the use of the site for use

as a caravan site in accordance with the existing planning permissions and LDC. This reinforces my view as stated above.

48. I conclude that there is no evidence that the planting positions identified in relation to this ground of objection are unsuitable, or that the requirements of the TRN in this regard are anything other than reasonable. I therefore find no reason to vary the Notice on these grounds.

Proximity to overhead power lines and cables

49. The northern part of the appeal site is crossed by what appears to be a medium-voltage electricity supply line at a height of about 6m or so above ground. The southern section is skirted by a single, lower-voltage cable, which in places hangs at a height of around 3m or less. At the hearing, the Council questioned whether the latter might be redundant, but in the absence of any evidence, I have assumed that the cables are all live.
50. A number of the replacement planting positions required by the TRN are either underneath, or close to, these existing cables. The Council acknowledges that planting large trees too close to power lines could involve safety risks, either for the line itself or for those involved in maintenance work, and that planting in such positions would potentially conflict with good forestry or arboricultural practice. In such cases therefore, the Council would not oppose a change to lower-growing species, such as hazel, hawthorn, holly or elder. The appellants' preference, on the other hand, appears to be to vary the relevant planting positions to those shown on Figures 824 and 825. The planting positions concerned fall into a number of distinct groups, as follows.
51. **TRN positions Nos 21 and 28:** In the TRN, these two planting positions would be directly under the overhead line that crosses the northern part of the appeal site, close to the river bank. The species proposed in the TRN, Oak and Willow, are ones which would be expected to reach more than twice the height of the cables. The alternative species suggested by the Council would grow to a lesser height, but nevertheless could easily reach a height that, in these positions, would involve a need for some form of on-going management. In these cases therefore, it seems to me that the better solution would be to adopt the appellants' alternative planting positions. I therefore intend to vary the TRN accordingly.
52. **TRN position No 18:** In this case, although the proposed planting position is not directly under the overhead line, I agree with the appellants that it would still be rather too close for a large tree such as the Alder proposed in the TRN. But even so, given the slightly greater spacing, it seems to me that a lower-growing species could be safely accommodated, without any change to the required planting position. I shall therefore vary to TRN to this effect.
53. **TRN positions Nos 11, 22, 26 and 29:** These four planting positions, as proposed in the TRN, would all be within about 1.5m or less from the very low cable around the edge of the site's southern area. This would be too close, not only for the Oak or Birch trees specified in the TRN, but also for any of the smaller alternatives subsequently suggested by the Council. The alternative positions proposed by the appellants are sufficiently far away to avoid any safety or other issues, and I will therefore vary the Notice to substitute these positions.

54. **TRN positions Nos 24, 27 and 82:** These planting positions in the southern area are slightly further from the cable. Whilst they are too close for the large trees specified in the TRN, it seems to me that lower-growing species could be grown without undue risk. In this case, the appellants' alternative positions for Nos 24 and 82 seem to offer little or no advantage, and in the case of No 27, no alternative appears to have been proposed. At these locations therefore, I will vary the Notice with regard to the species only.
55. **TRN positions Nos 19, 30 and 32:** In these cases, also in the southern area, both the TRN positions and the appellants' alternatives are too close to the cable for the planting of large trees. However, the latter would be just about far enough away to allow for lower-growing species. In these cases therefore I intend to vary both the planting positions and the species.
56. **TRN position No 12:** This planting position seems to me far enough away from the cable to allow for the Rowan tree specified in the TRN, and I therefore find no need to vary the Notice in this respect.
57. For these reasons, I conclude that the terms of the TRN should be varied, with regard to the location of planting, at positions Nos 11, 19, 21, 22, 26, 28-30 and 32; and with regard to species, at positions 18, 19, 24, 27, 30, 32 and 82.

Relationship to existing tree canopies

58. In a number of cases, the planting positions proposed in the TRN are close to, or under the canopies of, existing trees. This would be likely to present a problem for the establishment of some types of new trees, for arboricultural reasons, particularly with regard to the need for adequate light, as well as competition for soil moisture. The affected trees fall into the following groups.
59. **TRN position No 15:** This planting position, as proposed in the TRN, would fall directly under the canopy of an existing large oak (adjacent to plot 2). At the site visit, the Council's witness agreed that this position was unsuitable for the proposed new Rowan. I therefore propose to vary the Notice, to substitute the alternative location proposed by the appellants.
60. **TRN positions Nos 48, 65-67, 72 and 79:** All of these positions, in the wooded northern part of the site, are directly under the canopies of existing large trees. The species required by the TRN are Rowan, Alder, Downy Birch and Oak. The shade tolerances of these species are classified by the appellants as either 'intolerant' or 'intermediate tolerance', and these descriptions are not disputed by the Council. In these locations, it seems to me that these species would have a high risk of failure. Consequently in my view it would be better in these positions to plant species such as Holly or Cherry, which are identified as more shade-tolerant by the appellants. I also note that in none of these cases do any alternative planting positions appear to have been suggested. I therefore intend to substitute the suggested alternative species in these positions.
61. **TRN positions Nos 46, 73 and 74:** In these three cases, also in the northern area, although the proposed planting positions are heavily shaded by existing trees, the species required by the TRN are among those agreed to be shade tolerant. And in any event, no alternative planting positions have been suggested. I therefore see no need for any variation in respect of the requirements for these trees.

62. For these reasons, I conclude that the terms of the TRN should be varied, with regard to the location of planting, at position No 15; and with regard to species, at positions 48, 65-67, 72 and 79.

Compacted ground

63. In the final group of cases, the appellants' objection is that the planting positions required by the TRN would involve planting in ground which is compacted or consolidated, due to the historic usage of these parts of the site for access and circulation.

64. **TRN positions 42 and 44:** These positions, within the northern part of the site, are on or adjacent to the two existing, well-established vehicular tracks through this wooded area. In both cases, the ground appears to comprise heavily compacted earth, mixed with embedded stone or gravel. I appreciate that the planting positions in the TRN reflect the places where the felled trees are thought to have stood, and clearly it is possible that an established tree might have tolerated these conditions, which would have developed over many years. I also have no doubt that it would be possible to excavate within these areas, so as to enable two new trees to be planted in the same places. But it seems likely that the size of the planting hole that would be needed in these conditions would be larger than in softer ground, and that this would also require mechanical digging equipment. Thus the disturbance to the surrounding woodland habitat would be greater, with the added potential for damage to other tree roots. In the circumstances, the alternative positions suggested by the appellants seem to me preferable to those proposed in the TRN, and I shall therefore vary the Notice accordingly.

65. **TRN positions 10, 39 and 40:** These planting positions are within the site's southern area, where the unauthorised recontouring of the land and other operational development has taken place, and I have already commented on them in relation to the possible conflict with that development. In addition, it is suggested by the appellants that these particular positions also coincide with compacted ground, along the line of the access track that ran through this area before those works took place. However, the basis for this is not clear; such evidence as there is, in the appellants' Figures 900 and 901, and the Council's Plan 2, seems to suggest otherwise. But in any event, given the extent of the earth-moving that has taken place, it seems likely that any compacted or consolidated ground that may have existed here would have been removed or redistributed during that process. Those compacted areas that exist now in this part of the site are clearly the result of the works that have taken place in breach of planning control, and which are subject to the on-going enforcement action. For the reasons already stated, I do not consider that any conflicts with this existing development justify any variation to the TRN. The additional ground of objection relating to compacted ground at these three positions does not alter that conclusion. I therefore make no variation to the TRN in respect of these planting positions.

66. I conclude that the TRN should be varied with regard to the locations of planting positions 42 and 44, but no others under this ground of objection.

The period for compliance (Ground b)

67. The period for compliance required by the TRN is 12 months. I accept that, if the Notice is upheld with regard to the southern part of the site, then

replanting will not be able to take place in that area until the works required by the EN have been carried out. But nevertheless, a year is a reasonably long time. Even if the first planting season of that period is lost due to these other works, there seems no reason why planting should not be possible within the next available season after that, and still within the 12 months provided.

68. I appreciate that, whatever the outcome of this appeal, the parties may wish to review the situation and hold further discussions, which could mean further delays to progress. But it would still be open to the Council to hold off taking any further action, if they thought it expedient to do so. Any such uncertainties do not justify extending the compliance period to 18 months as sought by the appellants.
69. I conclude that the compliance period of 12 months as specified in the TRN is reasonable. No variation is therefore made in this regard.

Other matters

70. I have had regard to the appellants' proposed woodland management plan. In general terms, I agree that such a plan is desirable, and that the particular details proposed would benefit the existing and new trees at the site. However, in dealing with a TRN, there is no power to impose conditions or obligations, and thus I have no means of securing the implementation of such a plan. And in any event, I can see nothing in the proposed plan that would cause me to change my views on any of the matters discussed above.
71. I have considered all the other matters raised, but none alters, or leads me to wish to add anything further to, the conclusions that I have already set out in this decision. I am fully aware of the strength of feeling in the local community. But in so far as the circumstances leading to the service of the TRN result from actions that were found to have been unlawful, those matters have now been dealt with through the legal system, and it is not the function of the present TRN to have any further punitive effect. Rather, the purpose of the Notice is to secure the planting of replacement trees, in a manner that satisfies S.206 of the 1990 Act; and which also achieves as much as is possible and reasonable towards the long-term repair of the landscape, and the rectification of the harm caused to local heritage assets and their settings. In my view, the variations that I propose to make are consistent with this aim.

CONCLUSION

72. For the reasons set out in this decision, I conclude that the TRN should be varied in accordance with the attached Schedule of Variations, which also includes an amended Design Schedule and amended Design Plan. To this extent, the appeal is allowed. In all other respects the Notice is upheld, and the appeal is dismissed.

J Felgate

INSPECTOR

SCHEDULE OF VARIATIONS

The Tree Replacement Notice issued to Haytop Country Park Limited by Amber Valley Borough Council on 27 January 2021 is hereby varied as follows:

- 1) In Appendix B of the TRN, the Design Schedule is deleted and replaced with the Amended Design Schedule attached hereto.
- 2) In Appendix C of the TRN, the Design Plan is deleted and replaced with the Amended Design Plan attached hereto.



Amended Design Schedule

The schedule on the following two pages is the Amended Design Schedule referred to in my decision dated:

by John Felgate BA(Hons) MA MRTPI

Land at Haytop Country Park, Whatstandwell, Derbyshire DE4 5HP

Reference: APP/TRN/M1005/8424

Tree Reference Number	Species		Size	Replant Location Coordinates	
	Scientific Name	Common name		X (Easting)	Y (Northing)
1	<i>Betula pendula</i>	Silver Birch	Standard	433040	353722
2	<i>Sorbus aucuparia</i>	Rowan	Standard	433039	353725
3	<i>Betula pendula</i>	Silver Birch	Standard	433051	353725
4	<i>Quercus petraea</i>	Sessile Oak	Standard	433060	353727
5	<i>Betula pendula</i>	Silver Birch	Standard	433062	353738
6	<i>Betula pendula</i>	Silver Birch	Standard	433076	353747
7	<i>Quercus petraea</i>	Sessile Oak	Standard	433083	353750
8	<i>Sorbus aucuparia</i>	Rowan	Standard	433079	353756
9	<i>Betula pendula</i>	Silver Birch	Standard	433086	353762
10	<i>Quercus petraea</i>	Sessile Oak	Standard	433079	353778
11	<i>Betula pendula</i>	Silver Birch	Standard	433069	353733
12	<i>Sorbus aucuparia</i>	Rowan	Standard	433083	353740
13	<i>Ilex aquifolium</i>	Holly	Standard	433076	353780
14	<i>Tilia cordata</i>	Small-Leaved Lime	Standard	433069	353789
15	<i>Sorbus aucuparia</i>	Rowan	Standard	433111	353846
16	<i>Alnus glutinosa</i>	Common Alder	Standard	433268	353929
17	<i>Salix alba</i>	White Willow	Standard	433253	353937
18	<i>Crataegus monogyna</i>	Common Hawthorn	Standard	433239	353949
19	<i>Ilex aquifolium</i>	Holly	Standard	433095	353746
20	<i>Alnus glutinosa</i>	Common Alder	Standard	433209	353957
21	<i>Quercus petraea</i>	Sessile Oak	Standard	433232	353937
22	<i>Betula pubescens</i>	Downy Birch	Standard	433102	353757
23	<i>Quercus petraea</i>	Sessile Oak	Standard	433094	353731
24	<i>Crataegus monogyna</i>	Common Hawthorn	Standard	433108	353747
25	<i>Quercus petraea</i>	Sessile Oak	Standard	433099	353736
26	<i>Quercus robur</i>	English Oak	Standard	433096	353782
27	<i>Sambucus nigra</i>	Elder	Standard	433119	353758
28	<i>Salix alba</i>	White Willow	Standard	433222	353948
29	<i>Quercus petraea</i>	Sessile Oak	Standard	433131	353793
30	<i>Crataegus monogyna</i>	Common Hawthorn	Standard	433128	353787
31	<i>Quercus petraea</i>	Sessile Oak	Standard	433143	353789
32	<i>Crataegus monogyna</i>	Common Hawthorn	Standard	433122	353776
33	<i>Quercus robur</i>	English Oak	Standard	433118	353793
34	<i>Betula pendula</i>	Silver Birch	Standard	433130	353798
35	<i>Quercus petraea</i>	Sessile Oak	Standard	433121	353805
36	<i>Tilia cordata</i>	Small-Leaved Lime	Standard	433116	353810
37	<i>Quercus petraea</i>	Sessile Oak	Standard	433086	353797
38	<i>Sorbus aucuparia</i>	Rowan	Standard	433100	353808
39	<i>Quercus petraea</i>	Sessile Oak	Standard	433107	353810
40	<i>Prunus avium</i>	Wild Cherry	Standard	433118	353816
41	<i>Tilia cordata</i>	Small-Leaved Lime	Standard	433093	353820
42	<i>Betula pendula</i>	Silver Birch	Standard	433134	353866
43	<i>Sorbus aucuparia</i>	Rowan	Standard	433179	353856
44	<i>Tilia cordata</i>	Small-Leaved Lime	Standard	433165	353865
45	<i>Quercus petraea</i>	Sessile Oak	Standard	433173	353875
46	<i>Ilex aquifolium</i>	Holly	Standard	433178	353882
47	<i>Quercus petraea</i>	Sessile Oak	Standard	433164	353881
48	<i>Ilex aquifolium</i>	Holly	Standard	433231	353931
49	<i>Quercus petraea</i>	Sessile Oak	Standard	433159	353888
50	<i>Betula pendula</i>	Silver Birch	Standard	433140	353888

Tree Reference Number	Species		Size	Replant Location Coordinates	
	Scientific Name	Common name		X (Easting)	Y (Northing)
51	<i>Quercus petraea</i>	Sessile Oak	Standard	433163	353891
52	<i>Tilia cordata</i>	Small-Leaved Lime	Standard	433166	353894
53	<i>Quercus robur</i>	English Oak	Standard	433156	353895
54	<i>Sorbus aucuparia</i>	Rowan	Standard	433094	353899
55	<i>Betula pendula</i>	Silver Birch	Standard	433231	353913
56	<i>Quercus petraea</i>	Sessile Oak	Standard	433118	353901
57	<i>Quercus petraea</i>	Sessile Oak	Standard	433096	353908
58	<i>Prunus avium</i>	Wild Cherry	Standard	433098	353917
59	<i>Quercus petraea</i>	Sessile Oak	Standard	433098	353923
60	<i>Betula pendula</i>	Silver Birch	Standard	433105	353925
61	<i>Quercus petraea</i>	Sessile Oak	Standard	433112	353933
62	<i>Quercus petraea</i>	Sessile Oak	Standard	433112	353912
63	<i>Tilia cordata</i>	Small-Leaved Lime	Standard	433126	353914
64	<i>Alnus glutinosa</i>	Common Alder	Standard	433142	353907
65	<i>Prunus avium</i>	Wild Cherry	Standard	433141	353919
66	<i>Ilex aquifolium</i>	Holly	Standard	433149	353918
67	<i>Prunus avium</i>	Wild Cherry	Standard	433153	353907
68	<i>Quercus petraea</i>	Sessile Oak	Standard	433155	353901
69	<i>Prunus avium</i>	Wild Cherry	Standard	433163	353905
70	<i>Betula pendula</i>	Silver Birch	Standard	433167	353908
71	<i>Sorbus aucuparia</i>	Rowan	Standard	433171	353911
72	<i>Ilex aquifolium</i>	Holly	Standard	433186	353915
73	<i>Ilex aquifolium</i>	Holly	Standard	433183	353921
74	<i>Prunus avium</i>	Wild Cherry	Standard	433185	353927
75	<i>Prunus avium</i>	Wild Cherry	Standard	433188	353932
76	<i>Quercus robur</i>	English Oak	Standard	433185	353942
77	<i>Quercus petraea</i>	Sessile Oak	Standard	433199	353928
78	<i>Betula pubescens</i>	Downy Birch	Standard	433206	353922
79	<i>Prunus avium</i>	Wild Cherry	Standard	433212	353913
80	<i>Quercus petraea</i>	Sessile Oak	Standard	433217	353922
81	<i>Corylus avellana</i>	Common Hazel	Whip	433125	353768
82	<i>Sambucus nigra</i>	Elder	Whip	433077	353724
83	<i>Sambucus nigra</i>	Elder	Whip	433136	353780
84	<i>Corylus avellana</i>	Common Hazel	Whip	433125	353799
85	<i>Ilex aquifolium</i>	Holly	Whip	433228	353935
86	<i>Corylus avellana</i>	Common Hazel	Whip	433209	353918
87	<i>Sorbus aucuparia</i>	Rowan	Whip	433206	353926
88	<i>Ilex aquifolium</i>	Holly	Whip	433189	353928
89	<i>Corylus avellana</i>	Common Hazel	Whip	433163	353901
90	<i>Sambucus nigra</i>	Elder	Whip	433148	353906
91	<i>Sorbus aucuparia</i>	Rowan	Whip	433145	353916
92	<i>Corylus avellana</i>	Common Hazel	Whip	433114	353907
93	<i>Sorbus aucuparia</i>	Rowan	Whip	433170	353899
94	<i>Corylus avellana</i>	Common Hazel	Whip	433180	353905
95	<i>Corylus avellana</i>	Common Hazel	Whip	433198	353912
96	<i>Sambucus nigra</i>	Elder	Whip	433198	353934
97	<i>Sorbus aucuparia</i>	Rowan	Whip	433193	353940
98	<i>Corylus avellana</i>	Common Hazel	Whip	433215	353928
99	<i>Sambucus nigra</i>	Elder	Whip	433224	353932
100	<i>Corylus avellana</i>	Common Hazel	Whip	433202	353947



Amended Design Plan

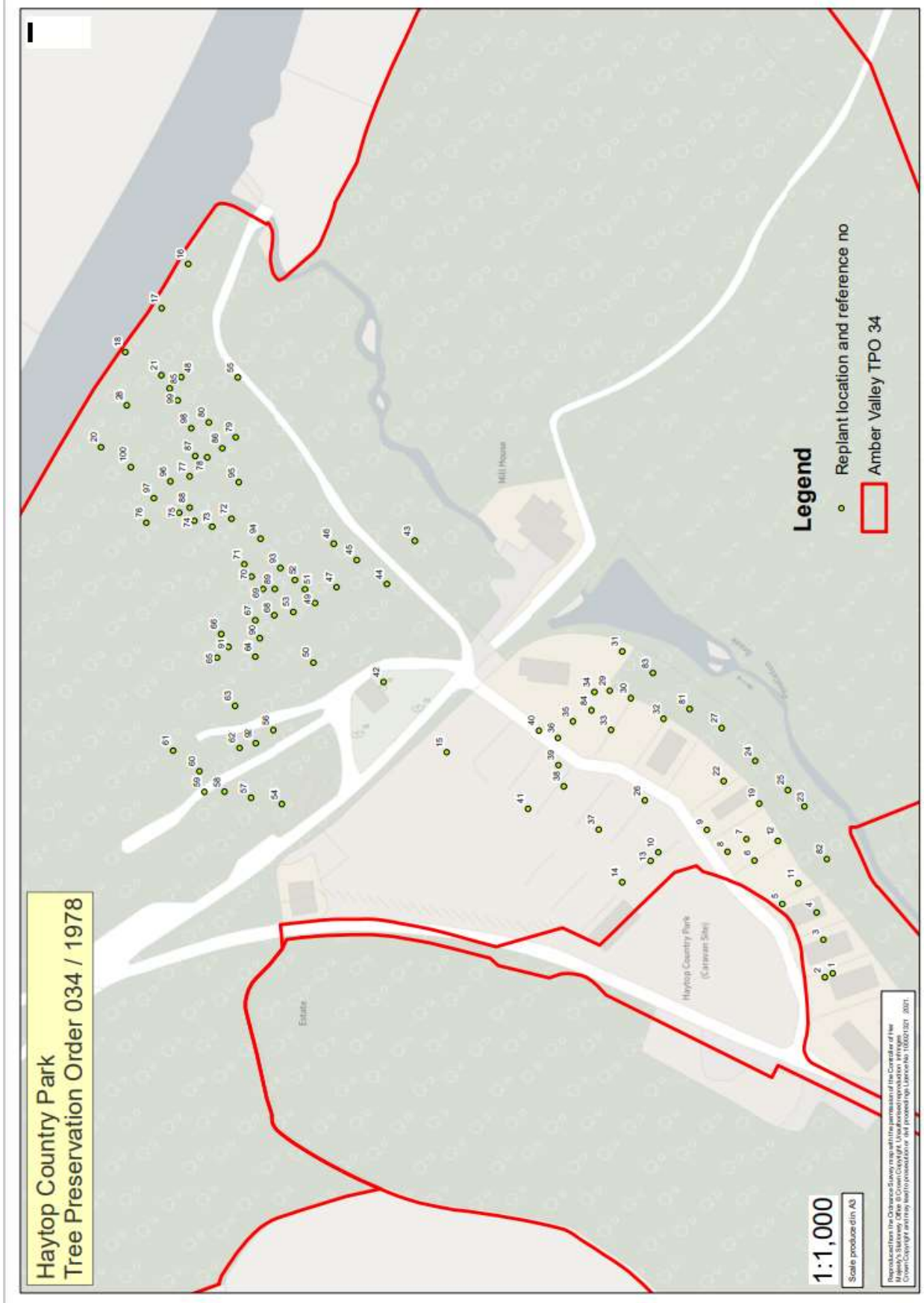
The plan on the following page is the Amended Design Plan referred to in my decision dated:

by John Felgate BA(Hons) MA MRTPI

Land at Haytop Country Park, Whatstandwell, Derbyshire DE4 5HP

Reference: APP/TRN/M1005/8424

Scale: 1:100 (at A3 size)



APPEARANCES

FOR THE APPELLANT:

Mr Richard Harwood KC

Mr Brian Wallis RPS Consulting UK Ltd
MICFor CEnv FArborA ALI

FOR THE LOCAL PLANNING AUTHORITY:

Ms Natalie Osei Solicitor, AVBC Legal Department

Mr Jonathan Cocking Arboricultural Consultant
FRES PDipArb(RFS) FArborA
MBS CBiol FLS

INTERESTED PERSONS:

Mr Quentin Hannant Whatstandwell & Alderwasley Community Action Group

Mr Donald Zmarzty Whatstandwell & Alderwasley Community Action Group

Ms Lorraine McQuaid Local resident

Ms Irene Bailey Local resident

DOCUMENTS

Appellants' Documents

Opening Statement by Mr Harwood
Statement of Mr Wallis (with Appendices)
Bush v Secretary of State for the Environment, July 1987
'Tree Analysis Sheet' (schedule of positions and issues)
'Tree Position List' (handwritten note)
Figures 824 and 825: TRN AVBC Positions/Layout/Repositioned Trees with Offsets
Figures 900 and 901: TRN Re-positioned Trees
Figures 902: TRN Re-positioned Trees and Operational Area

Council Documents

Statement of Mr Cocking (with Appendices)
Rebuttal statement by Mr Cocking
Aerial Images 2010-12 and 2017, with TRN Replant Positions
'Plan 1A'
'Plan 2' (2 versions)
'Plan 3'
'Plan 2 & 3'
'Plan 2A'
'Plan 2A & 3'
Planning permission dated 27 March 1952
Planning permission dated 17 June 1966
Appeal decision APP/M1005/X/19/3241549 dated 20 August 2021
First Tier Tribunal site licence decision, dated 6 July 2023

Documents tabled by the Interested Persons

Statement by Mr Hannant
Aerial photographs indicating requested viewpoints
Letter from Lyndsey Fogg of WACAG, dated 24 January 2022
Previous inquiry Proof and Appendices of D Evans (submitted by L Fogg)
Previous inquiry Proof and Appendices of M Morris (submitted by L Fogg)
Letter from Derwent Valley Mills WHS partnership, 6 January 2022
Letter from Alderwasley Parish Council, 19 January 2022
Email from Crich Parish Council, 11 January 2022
68 other individual representations from local residents, Dec 2021/ Jan 2022