

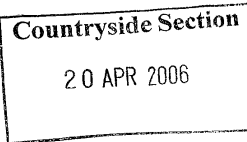
APPENDIX B

LETTER OF OBJECTION

LOWER THREAVE
NORTH STREET, BRAUNTON
DEVON EX33 1AJ

01271 814713

Miss C James
TPO Review Assistant
Isle of Wight Council
Council Offices, Seaclose
Fairlee Road
Newport, IoW. PO30 2QS



19th April 2006

Dear Miss James,

**Tree Preservation Order TPO/2006/8
Nine Acre Field, Freshwater**

Please find enclosed a formal Notice of Objection to the above-referenced TPO, which I am submitting on behalf of the field's owners.

I believe the document is self-explanatory, but I would ask that you contact me if there are any areas that require further explanation. I would also reiterate the main conclusion of the document, which is that the owners wish to work with IWC to try and resolve the differences between our respective visions for the future of the field, and that in this context, we are very open to any meetings and discussions you may suggest.

I look forward to hearing from you.

Yours sincerely,



Hugh Bond

**Notice of Objection
To
Tree Preservation Order
TPO/2006/8
Nine Acre Field, Freshwater, IoW**

Submitted by the owners of the field:

Hugh Bond	Ralph Bond	Mrs Jill Bond
Lower Threave	The Water Garden	40 The Street
North Street	Church Lane	Holywell Row
Braunton EX33 1AJ	Finchampstead RG40 4LT	Bury St Edmunds IP28 8LT

19th April 2006

Introduction and Summary

This Notice of Objection to IWC TPO/2006/8 is submitted by the owners of Nine Acre Field, Freshwater, to which the TPO refers. All submissions made by the owners in respect of TPO/2005/35, which preceded this TPO, are hereby withdrawn.

The following sections of this submission detail the owners' objections to the TPO, and their recommended modification of the TPO. This section summarises the owners' case.

The field has been in the owners' family since 1962, when it was planted with Christmas Trees as a commercial business. The business operated normally for a number of years, with periodic harvesting. However, the bulk of the crop was destroyed by fire in 1976, since when the field has been largely unmanaged. At the request of Freshwater Parish Council, limited clearance of dead trees was carried out over the period 2000 to 2004.

In 2005 the owners reviewed the situation, and concluded that the field was a visual eyesore, and represented uncontained risk and unlimited financial exposure, primarily because of their public liability responsibilities. The risk of fire was high. The owners agreed a management plan, which in the short term involved the removal of the remaining conifers, scrub, dead, diseased and immature trees, and the creation of fire breaks. The objective was to create a more visually attractive park-like space, preserving trees of quality. This would minimise the owners' financial exposure. In the longer term, this clearance would enable the owners to evaluate alternative revenue generating uses of the field.

Freshwater Parish Council and IWC were made aware of the owners' plans for clearance prior to work commencing in September 2005. The exercise was approximately 40% complete when IWC imposed, without any prior discussion, Area TPO/2005/35. All work, including disposal of cleared material was halted.

TPO/2005/35 was replaced by TPO/2006/8 on 17th March 2006. IWC has stated that the reasons for imposing the TPO are that the trees in Nine Acre Field provide a visual amenity, are visible from surrounding public rights of way, are a valuable wildlife habitat, and are at risk from felling and development plans. The owners argue that:

- The majority of the trees are of very poor quality, are smothered by scrub, and do not represent a visual amenity. The trees have no rarity value, the size and form of most of them is poor and they have limited value as a screen. The owners want to remove the scrub and poor quality trees. The owners want to preserve quality trees.
- Despite having little commercial value, the remaining conifers on the site are a crop, which the owners have the right to harvest.
- The owners recognise their responsibilities in respect of wildlife, and have been scrupulous in observing these. The wildlife habitat is not threatened by the owners' plan to remove scrub and poor quality trees.

- The owners have no development plans as such. The owners wish to generate income from the field, and the creation of an open space within the field will allow them to evaluate future usage.

The owners are willing to work with the IWC to agree a compromise which satisfies all parties. The owners would like to remind IWC that the European Court of Human Rights has stated recently that there should be a “fair balance” between the rights of a landowner and the public interest. Moreover, the IWC, as both “proposer and judge” in respect of making and confirming TPOs, has “the obligation to deal thoroughly, conscientiously and fairly with any objection.” The owners do not consider that TPO/2006/8 as currently drawn represents a fair balance, nor that the IWC has fully considered the owners’ concerns. The TPO essentially seeks to preserve the field as a public amenity without consideration of its history of private economic use. The TPO does not address the issues of invasive scrub, poor quality and visually unattractive trees. In addition, it does not address the owners concerns about the risks of fire, anti-social behaviour and their financial exposure to public liability claims. The TPO also does not address the owners’ rights to earn income from this asset.

Background

History

Nine Acre Field was bought by the owners’ family in 1962, when it was converted from pasture into a Christmas Tree plantation. 30,000 trees were planted in all. The business operated for a number of years with seasonal harvesting. However, the bulk of the crop was destroyed in a serious fire in 1976, which also damaged neighbouring property. Since that date the field has been largely unmanaged. All trees on the site are therefore either part of the original conifer plantation or have been self-seeded over the past 30 years.

In the period 2000-2004, the owners carried out limited maintenance to clear dead trees which were a risk to the public using the footpaths and bridleway. On several occasions Freshwater Parish Council communicated with the owners to ask that specific clearance work be done. At the same time, the owners were made aware that the field was being used for antisocial behaviour, such as drug taking, and that at least one person was living rough in the old conifer plantation. The owners were also very conscious of the fire risk, and their public liability responsibilities. It was not possible to obtain insurance. Large areas of the field were inaccessible because of dense scrub. Overall, the field gave the impression of neglect and was a visual eyesore.

Owners’ Review

In 2005 the owners reviewed the situation, and after consulting with an arboreal specialist, concluded that:

- there was little commercial value in the remaining conifer trees
- the non-conifer trees were mostly of very poor quality
- visually, the site was very unattractive

- public access could not be prevented, nor activities on the field monitored
- there were ongoing fire and public safety risks
- the owners were exposed to claims under their public liability responsibilities

Management Plan

As a result of this review, the owners agreed a management plan, the main element of which was to clear the remaining conifers, scrub and brambles, and dead, diseased and immature trees. Fire breaks were to be created on the western and southern boundaries. Work was to be compliant with Forestry Commission regulations, and consideration was also to be given to the needs of wildlife, and the visual amenity enjoyed by neighbouring properties. The objective was to preserve the quality trees and establish a more open, park-like environment. This would:

- be more attractive visually
- be easier to manage
- mitigate the risks of fire and antisocial behaviour
- enable the owners to limit their financial liability
- enable the owners to evaluate revenue earning uses for the field

Clearance Work

In 2005 Freshwater Parish Council and IWC were informed of the owners' intention to clear firebreaks and to remove conifers, scrub, dead and diseased trees. No objections were raised at that time. Permission was granted by IWC to use the bridleway from Golden Hill to bring machinery onto the site. Work commenced in September 2005.

Work was suspended after a week because of concerns about a badger sett in the middle of the field. A badger expert was consulted, who satisfied himself that the sett was almost certainly unoccupied. At the same time, the field was inspected by the Forestry Commission, who confirmed that clearances to date had not contravened forestry regulations. However, Area TPO/2005/35 (covering the whole field) was issued the night before work was due to recommence.

Whilst accepting the right of IWC to impose a TPO without notice, the owners feel that this action was unnecessary and unconsidered, and that IWC should have discussed their concerns with the owners and their contractor before issuing the TPO. The imposition of this TPO in this manner caused the owners considerable inconvenience and disruption and has had the unfortunate effect of halting all work, including the disposal of waste.

The owners were advised by IWC that any damage to trees caused by waste disposal could result in prosecution. The owners decided that they could not afford to take that risk, and instructed the contractor to cease all work. The owners had hoped to be able to dispose of waste when the Area TPO was replaced by the current TPO. However, as this was not issued until March 2006, when the bird nesting season had already started, disposal was still not possible. This has led to the current situation where visually, the field is probably worse than before, and the risk of fire much higher.

Long Term Plan

The owners recognise the need for a long term plan to manage Nine Acre Field. They do not feel that the current situation is sustainable, as it perpetuates the poor amenity value of the field. The owners have made recommendations for changes to the TPO which are detailed in this document. If these are accepted, the owners believe the amenity value will be enhanced.

If implemented, the recommended changes to the TPO will also allow the owners to evaluate a long term solution. The owners will explore alternative, revenue generating uses for the field which are compatible with the amended TPO. Options which may be considered include re-establishment of the conifer plantation, using the land for grazing, allotments, hay meadow use etc.

Specific Objections

Extract from TPO/2006/8/Reg3Notice1.

“The grounds for making the TPO are that the trees make a contribution to the visual amenity of the site and landscape. The trees are visible from Collards Close and Golden Ridge, Freshwater and public footpaths F16 and F65 and bridleway F15. The trees also provide a valuable habitat for wildlife, including red squirrels. The trees are at risk from felling operations and future development plans.”

Objections

“... the trees make a contribution to the visual amenity of the site and landscape.”

The owners agree that trees contribute to visual amenity. However, the owners would argue that it is the quality of the trees rather than their number which makes the most contribution. Guidance from the Office of the Deputy Prime Minister (ODPM) to Local Planning Authorities on assessing the amenity value of trees includes the following criteria:

- Rarity
- Size
- Form
- Value as a screen
- Contribution to the area's character

Against these criteria, the majority of the trees on Nine Acre Field fail the amenity test. There are a number of quality trees, primarily oaks, which should be considered for preservation. However, there are also many trees of very poor quality and areas of scrub which detract from the overall visual amenity. There are also large numbers of old conifers, remnants of the original plantation, which devalue the character of the landscape. The owners believe that removal of the conifers, poor quality trees and scrub will enhance the visual amenity of the site. Within the broader context of the Golden Hill landscape, the owners believe that their vision of open parkland with

Nine Acre Field, Freshwater IoW

quality trees will complement the landscape of deciduous woods and heathland to the north of the field.

"The trees are visible from Collards Close and Golden Ridge, Freshwater and public footpaths F16 and F65 and bridleway F15."

The argument for quality rather than quantity is equally applicable to the view into the field from the boundaries. In respect of views from the footpaths and bridleway, the current mass of scrub and poor quality trees obscures views of quality trees. Visibility into the field from Golden Ridge is very restricted, as most houses have high fences or hedges. Even so, the owners feel that the same argument of quality rather than quantity applies. The situation is somewhat different in respect of Collards Close. The conifer plantation was well-established when the houses were built. Most householders whose properties back onto the field have (with the owners' consent) cleared areas into the field, which they use as garden extensions.

The mass of trees and scrub beyond these clearances therefore represents a security screen for these properties. The owners propose that an unimproved strip to the south of the site be preserved for this reason.

"The trees also provide a valuable habitat for wildlife, including red squirrels."

The owners are very sensitive to their obligations to wildlife. During clearance work, the contractor was instructed to inspect for squirrel dreys prior to any felling. The contractor reported that he did not find any. However, clearance work was suspended pending investigation of an old badger sett in the field, and was only due to recommence after a badger expert said that he was 99% sure the sett was unoccupied. Even then, the owners had arranged for this expert to be on site when work recommenced to monitor for the presence of active setts. Disposal of waste material is currently suspended whilst the bird nesting season is underway.

The owners have been made aware that Nine Acre Field forms part of a Site of Interest for Nature Conservation (SINC), IWC classification C188. The owners were not notified when this classification was initially made in 1997, and believe that it was imposed in error, the original drafters believing that the field was part of the publicly-owned Golden Hill Country Park. The flora and fauna listed as valuable in the original citation were exclusively heathland species, which do not exist in a conifer plantation. A subsequent citation has included red squirrels as being present. However, given the absence of squirrel dreys on Nine Acre Field, it is probable that squirrels live in the wooded elements of Golden Hill Country Park rather than the field.

If it is trees *per se* that provide the 'valuable habitat' for wildlife, then the owners' plan does not threaten this habitat, as after clearance of scrub and poor quality trees, there will still be numerous trees on the site.

"The trees are at risk from felling operations ..."

As has been explained, the owners have no intention of felling quality trees, and have not done so in clearances to date. The owners do want to remove the remaining conifers. Not only are they a crop to be harvested, but as they are shallow-rooted, they are at risk of being wind-thrown and therefore represent a risk to the public. The

owners also wish to remove scrub, dead, diseased, poor quality and immature trees. If IWC agree to the main thrust of the owners' argument, that TPO designations on this site should be limited to individual trees, chosen for their quality, then this reason is redundant.

"...and future development plans."

The field was bought and developed as a commercial venture. The owners have derived income from it in the past, and have the right and expectation to earn income from it in the future. How the field will be used commercially has not been decided yet. As have other landowners in the area, the owners have made a representation to IWC for Nine Acre Field to be considered for inclusion in the Local Development Framework. This is sensible commercial management of the owners' assets. It is not connected to the land management exercise on Nine Acre Field. No application for planning permission has been made. This reason for imposing the TPO should be deleted.

Analysis of TPO/2006/8

TPO/2006/8 includes the following elements:

- Individual trees - 6 oak trees designated
- Groups of trees - 4 groups containing 42 oak trees
- Woodland area - single area of complex shape, approximately 4.5 acres, to include all trees, understorey and regeneration

Assessing each of these elements in turn:

Individual trees T1 to T6

The owners agree that most of these are good specimen trees, and should be preserved. Tree T3 is not a good specimen and should be revisited.

Groups G1 to G4

These are groups of juvenile, self-seeded oak trees. The owners feel that the quality of most of these trees is poor. The trees are small, of poor form and growth is likely to be constrained because they are competing with each other. The owners suggest these groups be revisited and reclassified to include quality trees only.

Woodland W1

The owners consider that the woodland classification for this area of the field is not warranted, for the following reasons:

- Most of the deciduous trees within the area defined as woodland are of very poor quality. These poor quality trees are characterised by deformed shape, spindly growth, irregular branch development etc. In some places these trees are dangerous. At least one oak has fallen across the bridleway in the last year.

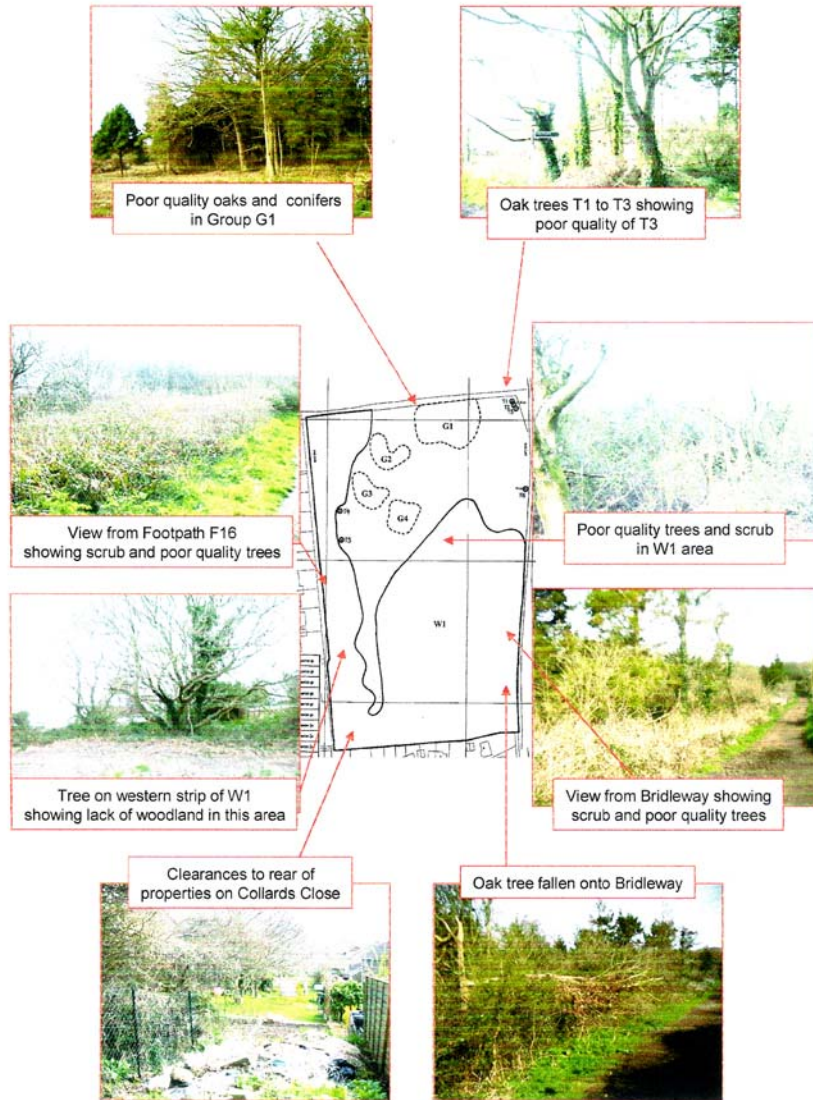
Nine Acre Field, Freshwater IoW

These trees should be removed, as they do not contribute to either a visual amenity or a sense of woodland.

- There are still significant areas of the original conifer plantation, especially in the area to the north east of the W1 designation. In other areas of the field, IWC has accepted the argument that conifers do not warrant protection (for instance, in the area of Group G1.) In an area of approximately 2 acres in the north of W1 there are more than 100 conifers. The owners should be allowed to remove these trees, which would then expose some quality oaks in the area which are worthy of individual protection.
- Much of W1 has no trees, but comprises areas of scrub, bushes and bramble. These areas should not have any TPO classification. In particular, the western strip of W1 parallel to footpath F16 has no continuous tree canopy and includes large areas of scrub. The woodland designation should be removed from this area.
- There are a significant number of good quality trees within the W1 area. However, the visual amenity value of these is degraded by scrub and poor quality trees. These quality trees should be exposed and preserved.
- The owners object to the term 'understorey' being applied to the woodland designation. IWC has advised the owners that understorey is defined as "any woody plant whatsoever which grows within the woodland area." This is outside the scope of a TPO. The best practice guideline produced by the ODPM states that "TPOs cannot be applied to bushes and shrubs" and "only the cutting down, destruction or carrying out of work on trees within the woodland area is prohibited." If the term 'understorey' is confirmed, then the owners will be at risk of prosecution if shrubs or bushes are removed for the purposes of fire prevention. Additionally, the owners have no control over the actions of third parties, including IWC contractors clearing footpath verges, property owners in Collards Close maintaining clearings in the field, children playing in the field etc., all of whom may damage shrubs and bushes. It is unacceptable that the owners are placed in this position of jeopardy.
- The area designated as woodland includes areas to the southern boundary which have been cleared by property owners in Collards Close, and which are used either as extensions to their gardens or (adjacent to No. 98 Collards Close) as a firebreak. It is clearly inappropriate that these areas should have a woodland designation.
- The area designated as woodland has an irregular shape. The external boundaries are clearly meant to be footpath F16 (western edge) bridleway F15 (eastern edge) and Collards Close properties (southern edge). The internal boundaries are shown as lines on a 1:1250 scale map. There is insufficient definition to determine the exact boundary of woodland. The result is that the owners will be at risk of prosecution if future maintenance work infringes on what IWC believes is woodland and the owners believe to be open land. This places the owners in an unacceptable position of uncertainty.

Some of these points are illustrated in the diagram overleaf. All photos were taken in April 2006.

Nine Acre Field, Freshwater IoW



Recommendations

The owners accept that Nine Acre Field has an amenity value to the community, and that this may constrain anything they wish to do which alters the field's appearance or usage. However, the owners also have rights. The field is a valuable asset, which the

owners should be able to exploit for economic gain. The owners also have the right to manage the field in such a way as to limit their exposure to financial risk. There needs to be a balance between these rights, and what is perceived as the public interest.

The owners wish to work with the IWC in devising a sustainable management plan for the field which best meets the objectives of the various stakeholders. The owners feel that the current TPO/2006/8 is unsatisfactory as the basis for a sustainable management plan. By seeking to preserve the field in its current form, the TPO does not address the visual amenity issue, in that it maintains poor quality trees and visually invasive scrub, to the detriment of the quality trees on the site. It inhibits the owners from removing the remaining conifer trees, which were planted as a crop to be harvested. It does not address other issues that the owners have identified, including:

- Visual amenity of the site
- Fire and antisocial activity risks
- Public liability responsibilities
- The owners right to enjoy their property

The owners therefore propose the following modifications to the TPO.

Individual trees T1 to T6

Revisit T3 to assess its quality.

Groups G1 to G4

Revisit these groups, recount and reclassify to include individual trees of quality only.

Woodland W1

Remove the woodland designation from the western strip (parallel to footpath F16) between a point approximately 60m from the southern end of the footpath to the northern end of the field. Assess trees within this area for individual protection. Allow scrub and bushes to be removed.

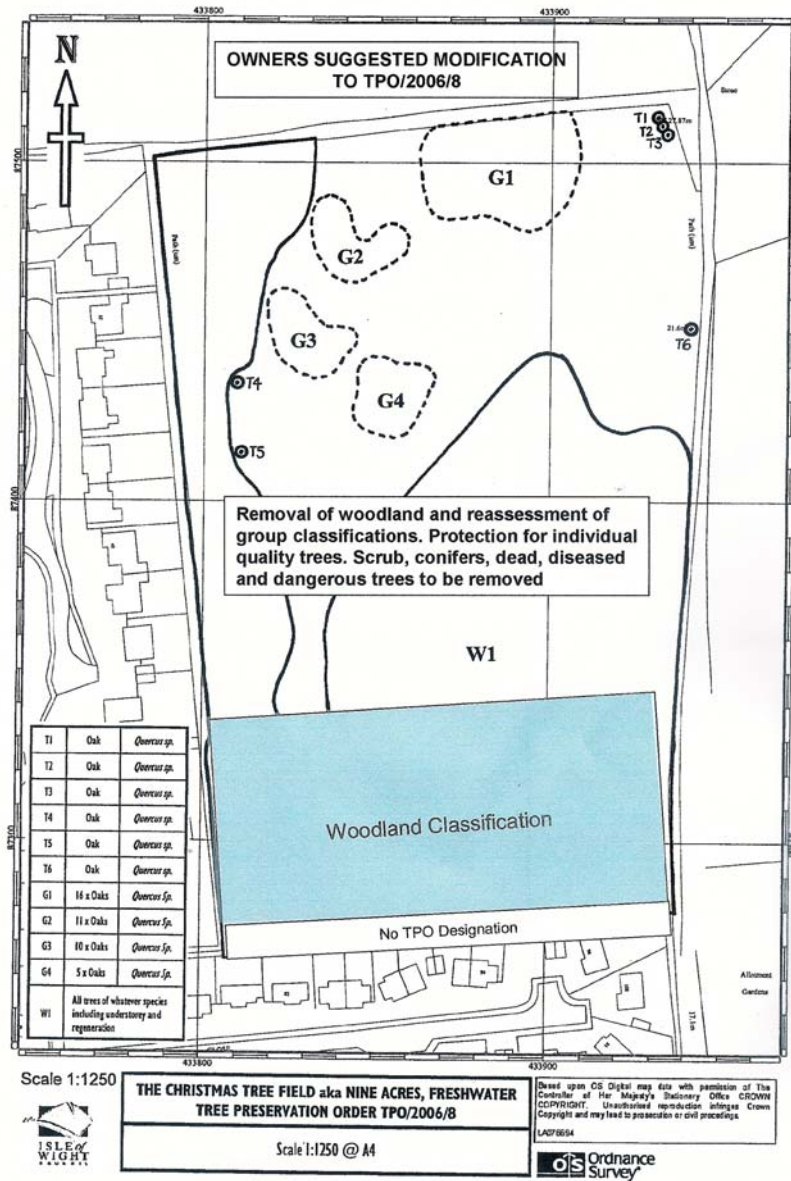
Remove the woodland designation from an area of approximately 2 acres at the northern end of W1. Allow owners to remove conifers and scrub, and then to preserve quality trees remaining.

On the southern boundary, remove the woodland appellation from the areas that have been cleared by residents of Collards Close.

The remainder of W1 (approximately 2 acres) should be clearly defined and then designated as woodland. This will act as a security screen for the Collards Close properties, and will also provide a suitable habitat for wildlife. The term 'understorey' should be removed from the designation.

The changes to the TPO which the owners recommend are shown on the attached diagram, which is provided to illustrate the recommendations, and is not to scale.

Nine Acre Field, Freshwater IoW



EMAIL OF OBJECTION FROM MR BOND DATED 26 MARCH 2006

Dear Miss James,

Confirm receipt of the above TPO on Sat 18/3.

There is a part I don't understand and I would be grateful if you could provide clarification.

Could you advise precisely what is meant by the words 'understorey and regeneration' in relation to WI

Rgds

Ralph Bond

REPLY TO EMAIL DATED 26 MARCH 2006 FROM MISS JAMES DATED 30 MARCH 2006 (Ref: TPO/2006/8/Email13)

Dear Mr Bond

**TOWN AND COUNTRY PLANNING ACT 1990
TOWN AND COUNTRY PLANNING (TREES) REGULATIONS 1999
THE CHRISTMAS TREE FIELD aka NINE ACRES, FRESHWATER
TREE PRESERVATION ORDER TPO/2006/8**

Thank you for your email of 26 March 2006 confirming receipt of the above Tree Preservation Order. Please find clarification of the woodland protection below.

The woodland W1 of [TPO/2006/8](#) protects all trees of any size, any age and any species that are within the boundary of the woodland at the time the TPO was made, and also any tree of any size, any age and any species that grows after the date the TPO was made. The protection of the new growth (i.e. understorey and regeneration) as well as the protection of the existing trees, maintains the integrity of the woodland. The woodland boundary is shown on the TPO plan by a continuous black line.

Therefore, if you wish to carry out work to any tree/s within the woodland, including understorey and regeneration, you will need the consent of the council.

I will notify you further if the above TPO is to be considered by Miscellaneous Appeals Committee and/or when the decision has been made whether or not to confirm the TPO.

Yours sincerely

Cat James
TPO Review Assistant
Tree Team

REPLY TO MISS JAMES' EMAIL DATED 30 MARCH 2006 FROM MR RALPH BOND DATED 2 APRIL 2006*

Dear Miss James,

Thank you for your prompt reply to my email (below).

I'm afraid it is still not clear to me what is meant by the words 'understorey and regeneration' in this context. 'Understory' in particular does not appear in my dictionary. As a TPO is a legal document it is important that I know what the council intends it to mean.

rgds

Ralph Bond

*A second request was made by Mr Bond on 5 April 2006

REPLY TO MR BOND'S EMAIL DATED 5 APRIL 2006 FROM MISS JAMES DATED 6 APRIL 2006 (Ref: TPO/2006/8/Email17)

Dear Mr Bond

**TOWN AND COUNTRY PLANNING ACT 1990
TOWN AND COUNTRY PLANNING (TREES) REGULATIONS 1999
THE CHRISTMAS TREE FIELD aka NINE ACRES, FRESHWATER
TREE PRESERVATION ORDER TPO/2006/8**

Thank you for your email of 5 April 2006 requesting further clarification of the term understorey and regeneration in relation to the above Tree Preservation Order.

Understorey (also often spelled the American way, understory) means "*An underlying layer of vegetation, especially the plants that grow beneath a forest's canopy.*" The American Heritage Dictionary of the English Language, Fourth Edition copyright 2000 by Houghton Mifflin Company <http://www.eref-trade.hmco.com/>. Regeneration means any trees which become established in the future after the Order was made.

For the avoidance of doubt any woody plant whatsoever which grows within the woodland area should be regarded as protected. If you are in any doubt as to whether or not a particular plant is protected please enquire of this office and we can clarify each case, or if you wish to do particular works simply make an application, and if the tree turns out to be not protected the Tree Officer will tell you so when he visits.

Yours sincerely

Cat James
TPO Review Assistant
Tree Team

**REPLY TO MISS JAMES' EMAIL DATED 6 APRIL 2006 FROM MR BOND
DATED 13 APRIL 2006**

Dear Miss James,

Thank you for your email (below) dated 6/4/06

You have explained that understorey in relation to this Tree Preservation Order is 'an underlying layer of vegetation, especially the plants that grow beneath a Forest's canopy' and have added that 'any woody plant whatsoever that grows within the woodland area should be regarded as protected'.

Could you advise how to interpret section 3 of the little guide that you sent with the order? This advises that an order can be applied to all types of trees but not 'hedges, bushes and shrubs'. I would imagine that most people would regard these as 'woody plants'.

I would also like guidance on the open areas, which have no canopy. Can these continue to be maintained as grassland/lawn? There is also an issue with the verges to the footpaths and bridleway which are maintained by the council. Are the owners to be held liable for the actions of your contractors?

I quite understand that you would prefer to deal with these matters on a case-by-case basis by way of a formal application. But from my point of view it is important to understand all the implications of this order before it is confirmed

You will be aware from our correspondence about the previous order, that the owners have a management plan, which seeks to carry out work to reduce the risk of fire and the amount of antisocial behaviour taking place on the land. It is for this reason that I think it is essential that we determine at this stage whether these proposals are going to be workable or not, before the opportunity to object to them passes.

Rgds
Ralph Bond

REPLY TO MR BOND'S EMAIL DATED 13 APRIL FROM MISS JAMES DATED 19 APRIL 2006 (Ref: TPO/2006/8/Email25)

Dear Mr Bond

**TOWN AND COUNTRY PLANNING ACT 1990
TOWN AND COUNTRY PLANNING (TREES) REGULATIONS 1999
THE CHRISTMAS TREE FIELD aka NINE ACRES, FRESHWATER
TREE PRESERVATION ORDER TPO/2006/8**

Thank you for your email of 13 April 2006.

UNDERSTOREY AND REGENERATION

Hugh Milner of the Forestry Commission had provided a definition of understorey and regeneration' which may help you understand what is protected in the woodland at The Christmas Tree Field. Mr Milner's wording is below:

'Understorey' is the growth below the wood's main canopy (overstorey). It maybe species that are immature overstorey such as young oak or beech but in a 'Coppice With Standards' woodland it will include the coppice of say hazel and field maple (underwood). In some woods where they are present it will include trees such as holly, whitebeam and yew which are not coppice but rarely if ever form part of an overstorey. It could include, where present, woody shrubs such as thorn, dogwood, spindle and gorse but not ground flora including bramble.

'Regeneration' is new growth in an existing woodland from seed or regrowth from cut stumps or coppice stools. It will include, where present trees, coppice and woody shrubs.

OPEN AREAS WITH NO CANOPY

You do not need the consent of the council to carry out any work which does not affect protected trees. This may include maintaining the open areas as grassland. However, within the protected woodland, you should be aware that all trees of any age are protected.

RIGHTS OF WAY

The council has a statutory duty to maintain the highway, which includes public footpaths. Work to trees which is in compliance with this statutory obligation does not require consent.

OWNER'S MANAGEMENT PLAN

You have mentioned that the owner's management plan provides evidence of good management, including seeking to reduce the risk of fire and antisocial behaviour taking place on the land . However, without a copy of the plan, it is not possible to consider any reference to it. Incidentally, I have contacted the IW Fire and Rescue Service; the Station Officer states that the Service has not been party to any consultation regarding the facilitating of a firebreak at Nine Acres Field, Freshwater. The Service has not made any recommendations or requirements towards a firebreak.

WOODLAND MANAGEMENT

The imposition of a TPO does not oblige you to carry out management of the woodland and if you do not want to manage your protected trees you do not have to. However, if you decide to do any works to protected trees, you need to seek the permission of the council - for which there is no charge. The legislation allows you to submit a programme of work as one application, such as specific operations which are to be repeated on an annual or regular basis, or a series of operations phased over a period of time. Such applications are in fact encouraged as a means of promoting ongoing beneficial woodland management plans of, say, five years without the need for repeated applications over a relatively short period of time. The council has an [application form](#) for your use. You may seek arboricultural advice about the management of the woodland. You do not have to seek advice from a consultant but, if you choose to, any costs incurred will not be borne by the council.

As this correspondence has been ongoing for some time, it is unlikely that the council will be able to fully address your concerns. Therefore you may wish to seek advice from an independent specialist such as Barrell Tree Consultancy, with whom I know you have had dealings in the past. If you choose to seek advice from an independent specialist, any costs incurred will not be borne by the council.

Yours sincerely

Cat James
TPO Review Assistant
Tree Team

REPLY TO MISS JAMES' EMAIL DATED 19 APRIL 2006 FROM MR BOND DATED 21 APRIL 2006

Thank you for your email (below) dtd 19/Apr.

There is quite a lot of new information here and I would like to make a considered reply. I am away at the moment and would like to reply to you over the weekend.

Unfortunately we have not had the opportunity to consider the contents of your email in our formal objection to this Tree Preservation Order, which was also sent on 19/4 by my brother, Hugh Bond (copied) .

I would be grateful if you could append this string of correspondence (beginning 18/3) to the formal objection we have already submitted. I would also be grateful if you would consider accepting any reply I send to you over the weekend as part of our objection.

Could you advise by return, copying in my brother, if you are not prepared to accept an extension to today's deadline for submitting objections to allow me to reply before the start of business on Mon 24/4.

Rgds
Ralph Bond

EMAIL FROM MR BOND DATED 23 APRIL 2006

Dear Miss James,

Further to my email 21/4 (below), I would like to give my response to your email to me dtd 19/4.

First of all, I would like to thank you for taking the trouble to research my enquiry. I appreciate your final comment, that this correspondence has been ongoing for some time. For the moment I feel that I need to address this enquiry to council, rather than to an independent specialist, as basically it concerns how the council interprets the order.

If I could explain the problem with 'understorey and regeneration' as I see it.

- 1) On the one hand owners need to manage the land in order to reduce the risk of fire and obtain cover for our public liabilities. We also need to curtail the antisocial behaviour taking place on the land, which also has public liability implications. We need to carry out thinning, create firebreaks and clear scrub.
- 2) On the other hand the council seeks to constrain the owners' management activities by imposing this order. The penalties for contravening this order are fines up to £20,000 in a magistrate's court or an unlimited fine if convicted in a crown court of damaging a tree. The order in relation to W1 encompasses 'all trees of whatever species *including understorey and regeneration*'

The owners now have a considerable problem, as we now have potentially unlimited financial liabilities whatever we do or do not do. In my opinion some compromise is necessary. It is unreasonable that the owners should face an unlimited fine for damaging what might be quite a small plant and also have no clear idea in advance of a prosecution whether that plant was protected by the order or not.

In these circumstances it is only reasonable that we seek clarification from the authority as to the precise meaning of the order. It is the authority that has created this order and it would be the authority that presumably would decide if any particular action should result in the prosecution of the owners.

We would still wish to instruct contractors to carry out works within W1 in order to limit our public liability as per 1) above. We would have to give them very precise instructions in order to avoid prosecution as per 2) above.

It's clear from the various attempts at defining these terms within this correspondence that the authority does not have a coherent view of what is encompassed by 'understorey'. Mr Milner's definition is helpful in that it mentions particular species, but the use of conditional terms such as 'maybe' and 'could include' before each definition does not inspire confidence and will lead to confusion for contractors working within W1.

The unavoidable effect of the authority's inclusion of 'understorey and regeneration' as it has been defined, will be to prevent the owners from clearing anything at all within W1 and thereby protecting every plant that grows there. This may in itself be a laudable aim, but it is beyond the scope of the relevant law. The Guide to the Law and Good Practice (OPDM) 2.3 states that 'a TPO may be used to protect trees and

cannot be applied to bushes and shrubs'. The authority clearly intends, by including 'understorey' in the order, to protect the bushes and shrubs within W1 and indeed Mr Milner's definition encompasses 'woody shrubs'. Unless the authority can cite relevant case law to justify a change in the law, then the protection of 'understorey' should be removed from the order.

I would like to briefly respond to the other points in your email dtd 19 / April.

Open Areas with no Canopy

I think you may have misunderstood my question. I am referring to the open areas *within* the woodland (W1). Specifically:

- Parts of the western strip which are largely clear and have no canopy
- The area that has been cleared by the residents of Collards Close. I need guidance from the council as to whether continuance of their actions (eg mowing the grass, growing vegetables etc) is going to be viewed as a contravention of the order (ie possibly preventing regeneration and understorey). If it is, then who are you going to prosecute, the person who has committed the offence or the owners of the land?

Rights of Way

Thank you for your assurances on this issue. Hopefully that's one less thing to worry about.

Owners Management Plan

As has been stated before, the plan itself is a private document, which the owners do not wish to put in the public domain as it includes discussion of topics other than the land management exercise. I understand Mr Willis and yourself have had a chance to examine it and must now be in a position to say whether anything in the plan is at variance with my description of it in my objection to the previous TPO and the summary of the plan in the owners' current notice of objection.

Fire and Rescue service

I don't understand your point. As far as I know we have never said that we have consulted the IW Fire and Rescue Service. My brother (Hugh Bond) would like to respond to this with a separate email.

Woodland Management

I wouldn't agree that we have no obligation to carry out management of the woodland, for the reasons set out in 1) above and in more detail in the owners' letter of objection.

As I mentioned in my email yesterday, I would be grateful if all the correspondence to date in this email string could be appended to the owners' letter of objection dated 19.4.06. I believe it would only be reasonable to allow the inclusion of this message under the 'regulation 4' provision, given the difficulties we have both had in keeping up with the correspondence over the holiday period etc.

Rgds
Ralph Bond