

# Report to Development Control Committee

Agenda  
Item:  
**A.2**

Meeting Date: 11 October 2013  
Portfolio: Economy and Enterprise  
Key Decision: Not Applicable:  
Within Policy and  
Budget Framework YES  
Public / Private Public

Title: CONFIRMATION OF TREE PRESERVATION ORDER 267  
Report of: Director of Economic Development  
Report Number: ED 31/13

## Purpose / Summary:

This report considers the confirmation of Tree Preservation Order 267, Rose Wood, Rose Bank, Dalston, and objections to the making of the tree preservation order.

## Recommendations:

Tree Preservation Order 267 is confirmed with or without such modifications as the Committee considers appropriate.

## Tracking

Executive:	
Overview and Scrutiny:	
Council:	

## 1. BACKGROUND

- 1.1 The Town and Country Planning Act 1990, Section 197 places a duty on Local Planning Authorities to make tree preservation orders where it appears to the authority to be necessary in connection with the granting of planning permission. The Department of Environment Transport and the Regions document, "Tree Preservation Orders A Guide to the Law and Good Practice" advises that "Tree Preservation Orders should be used to protect selected trees and woodland if their removal would have a significant local impact on the environment and its enjoyment by the public".
- 1.2 Tree Preservation Order 267 was made to protect an area of designated ancient woodland at Rose Bank Sawmill following the submission of planning application Ref. 13/0576 which brought to Officers' attention the loss of ancient woodland from this site without the requisite Environmental Impact Assessment or consent of the Forestry Commission, and the un-consented change of use from forestry to timber storage and vehicle parking. A copy of the plan relating to Tree Preservation Order 267 and the statement of reasons for making the tree preservation order are attached hereto at Appendix 1
- 1.3 Objections to the making of the tree preservation order were received by Carlisle City Council. The letters of objection and the Officers' replies are attached hereto at Appendix 2.
- 1.5 The objections are summarised below with the Officers replies in *italics*;
- (i) It is open to interpretation whether or not a tree preservation order is appropriate.

*When it is considered appropriate to make a tree preservation order is a matter of judgement for the local authority however, it must be expedient in the interest of amenity to do so. In this instance it was considered expedient due to the loss of the ancient woodland and the consequential loss of amenity and effect on the character of the area in which such woodlands are an important feature.*

- (ii) There must be a balance between the environment and development.

*The balance between the environment/loss of ancient woodland and the benefits accrued from any planning consent is considered during the planning application process. On the saw mill site portion of Rose Bank Wood no such balance has ever been considered as the ancient woodland has been removed without an Environmental Impact Assessment and*

*application to the Forestry Commission and no planning application has been submitted for change of use, although necessary, from woodland to car parking/storage. It should be noted that in both national planning policy and local planning policy there is a strong presumption in favour of the retention of ancient woodland sites, and planning permission would normally be refused for such sites.*

(iii) No further tree loss is required to provide the building subject to the current planning application 13/0576.

*Whilst there may be no need to destroy any more ancient woodland for the purposes of the current proposal the future intention of the owners cannot be known. Taking into consideration the extent of the loss of the ancient woodland over several years it is appropriate to protect the remaining ancient woodland to prevent further loss.*

(iv) The ancient woodland is not being removed, nor in danger of being removed.

*Since 1992 there has been a gradual loss of the ancient woodland which has continued till recently. Approximately 6300m<sup>2</sup> of ancient woodland has been lost from this site, which equates to nearly 50% of the ancient woodland area on the saw mill site.*

(v) The ancient woodland is not there to be enjoyed by the public or visible to the public.

*Although the ancient woodland is in private ownership it can still be enjoyed by the public, both for its intrinsic beauty and as a visual amenity as seen from the adjacent path and surroundings.*

(vi) Will the entire Rose Wood have a tree preservation order placed on it.

*Only the saw mill site is included within the tree preservation order as this is where the deforestation of the ancient woodland and un-consented development has been taking place.*

vii) Tree removal has been in accordance with the Forestry Commission guidelines, why is an Environmental Impact Assessment required.

*Deforestation i.e. felling woodland to use the land for a different purpose requires an Environmental Impact Assessment and the consent of the*

*Forestry Commission. This is a legal requirement under the Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999.*

(viii) The tree preservation order is an unnecessary precaution requiring repeat applications if work is required to the trees.

*The Order will not prevent good woodland management. Whilst an application will be required to carry out works to trees any consent can be conditioned to ensure that repeat activities can be carried out over a period of years without the need for repeat applications.*

(ix) The description of the ancient woodland should be more explicit as in the examples given in the Town and Country Planning (Tree Preservation) (England) Regulations 2012.

*The “all trees of all species” description leaves no room for misinterpretation and as such is much clearer.*

(x) What do the Council consider is a tree.

*There is no definition of a tree or woodland in the legislation. However, this has been considered by the Courts. The two cases that are relevant are Bullock v Secretary of State 1980, and Palm Developments Ltd v Secretary of State 2009. To summarise, a tree is anything that one would ordinarily call a tree, oak, sycamore, willow, etc. It follows that bushes such as elderberry are not trees and the tree preservation order would not apply. There is no size limit to a tree in woodland protected by the preservation order, so a seedling would be protected to the same extent as a large mature tree. The Council follows the interpretation of the Courts.*

(xi) The Council would be required to make pre-application site visits.

*Officers of the Council will make a site visit in response to any application to fell a tree. Pre-application visits at a mutually agreeable time and date are also welcomed.*

(xii) What is the chronology of ancient woodland loss from the site.

*The City Council have aerial photographs of the area from 1992 onwards which clearly shows the extent of the deforestation of the ancient woodland on the site over this time period. The deforestation has clearly been incremental but the timeline of the deforestation is irrelevant. It is the fact that it has occurred at all that is relevant.*

(xiii) Which part of the saw mill site has undergone a material change of planning use.

*All the site that has been the subject of deforestation by removal of the ancient woodland and changed to parking/storage etc has undergone a material change of use for which planning permission would be required.*

(xiv) The low frequency of use of footpath 11403.

*The guidance on making tree preservation orders says that the trees, or at least part of them, should normally be visible from a public place, such as a road or footpath. Frequency of use of the footpath is not a material consideration.*

## **2. PROPOSALS**

**2.1** Having duly considered the objections and Officers' observations Members have three options;

- (1) Confirm the tree preservation order as it stands; or
- (ii) Decline to confirm the tree preservation order; or
- (iii) Confirm the tree preservation order with modifications that is make the tree preservation order permanent in relation to some of the woodland specified in the order, but to exclude other woodland from the order.

**2.2** If Members are minded to add woodland to the tree preservation order, the tree preservation order should be confirmed. A variation order will then be made to add the new woodland. A further 28 day statutory consultation period with those affected will be undertaken on the addition of the woodland. If objections to the variation order are made a report will be drafted and brought before this Committee so Members can duly consider the objections and decide whether or not to confirm the variation.

## **3. CONSULTATION**

**3.1** The Owners of the affected property, and all those with an interest in the land were sent copies of the tree preservation order. A covering letter was enclosed explaining how to make representations to the Local Planning Authority.

## **4. CONCLUSION AND REASONS FOR RECOMMENDATIONS**

- 4.1** Tree Preservation Order 267 Rose Bank Saw Mill, Dalston, be confirmed with or without such modifications as the Committee consider appropriate.
- 4.2** The Tree Preservation Order will ensure the continuing visual and environmental benefits of the ancient woodland by preventing any further loss of the ancient woodland from this site.

## **5. CONTRIBUTION TO THE CARLISLE PLAN PRIORITIES**

- 5.1** Helps create a pleasant environment in which to live and work and engendering a pride in place.

**Contact Officer:** Charles Bennett

**Ext:** 7535

**Appendices attached to report:** Appendix 1: Tree Preservation Order Plan & Statement Of Reasons  
Appendix 2: Letters Of Objection And Officers Replies

**Note:** in compliance with section 100d of the Local Government (Access to Information) Act 1985 the report has been prepared in part from the following papers:

- The Town and Country Planning Act 1990; DETR Tree Preservation Orders A Guide to the Law and Good Practice

### **CORPORATE IMPLICATIONS/RISKS:**

**Chief Executive's** - None

**Community Engagement** – None

**Economic Development** – None

**Governance** – The validity of the tree preservation order cannot be challenged in any legal proceedings except by way of application to the High Court. An application must be made within six weeks from the date of the confirmation of the tree preservation order.

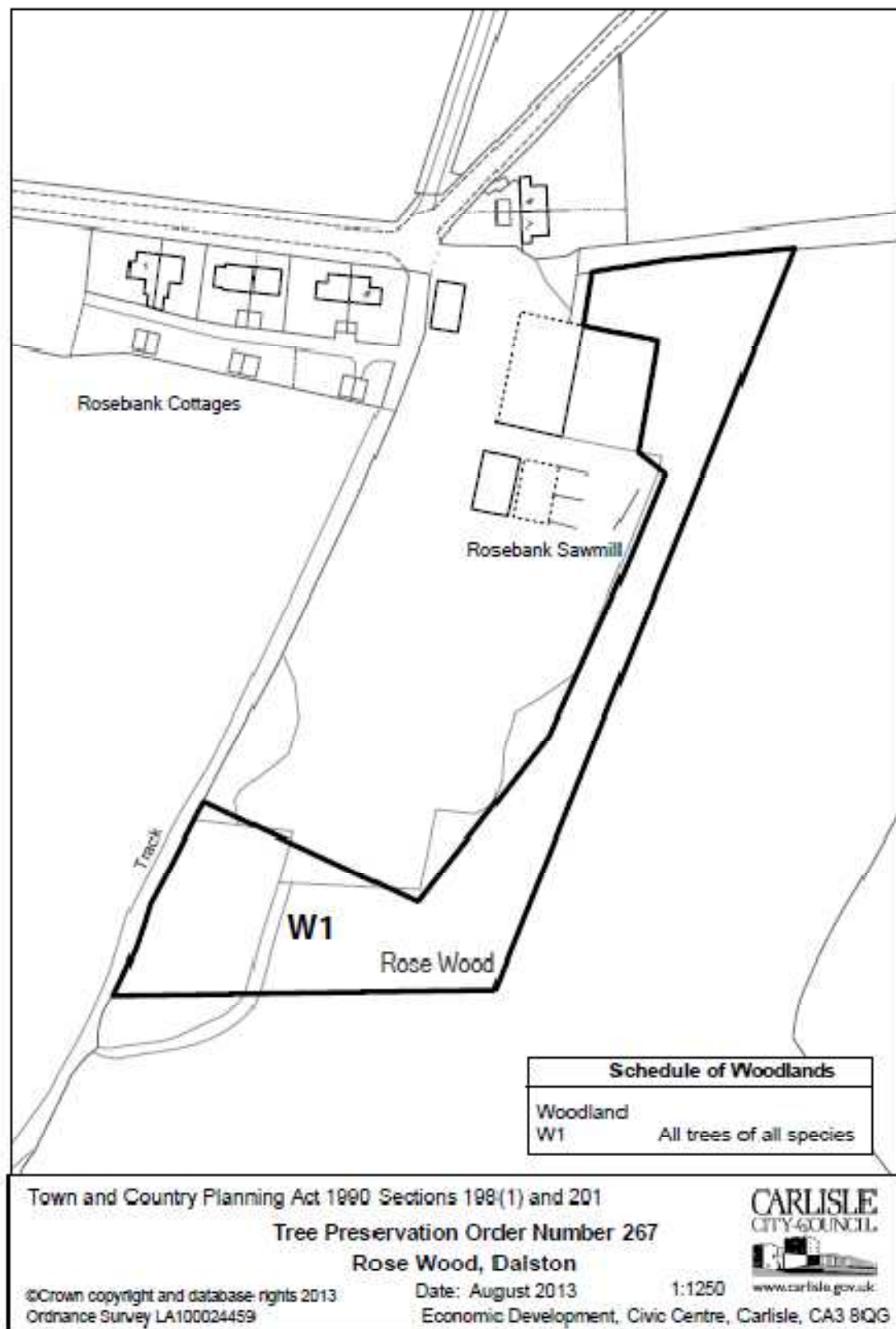
This Tree Preservation Order needs to be considered against the provisions of the Human Rights Act 1998. Under Article 6, the third parties, including local residents, who have made representations, have the right to a fair hearing and to this end the Committee must give full consideration to their comments.

Article 8 and Protocol 1 Article 1 confer(s) a right of respect for a person's home and a right to peaceful enjoyment of one's possessions, which could include a person's home, other land and business assets. In taking account of all material considerations, including Council policy it is considered that some rights conferred by these Articles on the residents/objectors and other occupiers and owners of nearby land that might be affected may be interfered with but that interference is in accordance with the law and justified by being in the public interest and on the basis of the restriction on these rights posed by confirmation of the Tree Preservation Order is proportionate to the wider benefits of approval and that such a decision falls within the margin of discretion afforded to the Council under the Town and Country Planning Acts.

**Local Environment** – The tree preservation order by preventing further loss of this ancient woodland site will ensure that the ancient woodland continues to provide a significant degree of visual amenity, and benefit the local environment and its enjoyment by the public.

**Resources** - Compensation maybe payable if a person establishes that loss or damage has been caused or occurred in consequence of the refusal of consent, or the grant of consent subject to conditions, subject to the restrictions and exemptions set out in The Town and Country Planning (Tree Preservation)(England) Regulations 2012. Necessary works to the trees will not be unreasonably refused, so it is not envisaged that a claim for compensation will occur.

## **APPENDIX 1 TREE PRESERVATION ORDER PLAN & STATEMENT OF REASONS**



**TREE PRESERVATION ORDER No. TPO 267**  
**ROSE WOOD, ROSEBANK, DALSTON, CARLISLE, CUMBRIA**



## STATEMENT OF REASONS

By virtue of section 197 of the Town and Country Planning Act 1990 the local planning authority has a duty to ensure, whenever it is appropriate, that in granting planning permission for any development adequate provision is made, by the imposition of conditions, for the preservation or planting of trees.

The guidance set out in the Department of the Environment Transport and the Regions document 'Tree Preservation Orders, A Guide to the Law and Good Practice' states that tree preservation orders should be used to protect selected trees and woodlands if their removal would have a significant impact on the local environment and its enjoyment by the public.

The woodland, by virtue of its size and location is clearly visible to the public from public footpath 114043, the road through Rosebank. The woodland contributes to the character of the landscape which is classified as type 5 Lowland, sub-type 5a Ridge and Valley, a key characteristic of which is native woodland, tree clumps and plantations.

Erosion of the ancient woodland site has occurred due to development pressure. To prevent further loss of the ancient woodland and to ensure the continuity of the amenity provided by the woodland a tree preservation order is considered appropriate.

Mr M Lambert  
Director of Governance  
Carlisle City Council  
Civic Centre  
Carlisle  
CA3 8QG



26 August 2013

Dear Mr Lambert

**Tree Preservation Order 2013 No 267 – Delivered 19 August 2013**

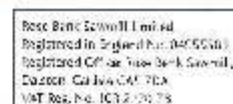
By way of introduction David Bowe (David) and Julie Bowe (Julie) own Rose Bank Sawmill. I am Pat Jefferson, Julie's mother and therefore David's is my son in law. For the past seven years I have worked at the Sawmill and my role is that of Standards and Marketing management. It is in this capacity that I have been asked to address the issue of the TPO placed on the site on 19 August, 2013.

To put everything into context and so that there may be some understanding of our position, I offer the following background:

On 27 January, 2009 Mr Charles Bennett and Jim O'Neil of the Forestry Commission visited Rose Bank Sawmill. Both were there by invitation as David wished to submit a planning application for a joiners shop and storage on the site currently under consideration in the recently submitted planning application. He wished to take advice on the woodlands area of the site, part of which would have been affected, before engaging structural engineers and submitting a planning application, due to the high costs involved.

The Forestry Commission obviously also want to protect and enhance woodlands but Jim O'Neil of the Forestry Commission recognised that the land in question was degraded and discussed with David ways of bringing about positive conservation gain from the small piece of Sawmill woodland which adjoins the 34 acre PAWS site owned by the Church Commissioners.

He suggested a slow process of work by under planting the existing sycamore canopy with some native shade tolerant species such as holly and hazel which would



re-establish the under storey of the woodland. He further suggested thinning of the sycamore and beech to allow more light to reach the floor to help any remnant native flora that exists within the soil.

His view was that with enough light available some higher forest species could be added like oak and ash. He noted one or two surviving oak in some old tubes and further suggested viable specimens should be carefully opened up by thinning around them.

The ultimate aim of the restoration, he advised, would be to have a variety of site native trees and flora growing, with a range of tiers of storeys of vegetation.

Mr Bennett was unable to concur with any of the suggestions. The planning application was never submitted and the opportunity of grant aid from Solway Border & Eden Programme was lost.

That was four years ago and having battled through an economic recession and adverse weather conditions which affects this business badly, David and Julie decided to try and stabilise the position by submitting the current planning application and accompanying background notes. Pre planning advice was sought and based on discussions with Stephen Daniel who visited the site it was decided to submit the planning application.

A post application site visit was made by Janet Blair and again helpful and appropriate discussions took place. We believe in this type of approach then any problems can be discussed openly and honestly. However, the third visit to the site was not so pleasant.

On Monday 19 August, Mr Bennett walked into the office and asked for Mr Bowe. He was told that he was not on site and he then abruptly handed over and announced "Tree Preservation Order" to the only person in the office. He did not introduce himself and he did not ask who the person was that he was handing his TPO to. It happened to be Julie Bowe and Julie is a director of the business, but she could have been anyone. At that juncture David returned to the Sawmill and became involved in the discussion. Taken aback at the extreme measures in the TPO he requested that Mr Bennett accompany him along the site and see for himself overhanging bushes and foliage which needs to be cut back on a regular basis.

For the second time, Mr Bennett did not want to know. David asked if he could appeal and he was told he could but he ought to remember that this could affect his Planning Application and the City Council would make him restore the Ancient Woodland on the area where the extension shed would go. This land is currently used as a drying are for the peeled timber and keeps movement of the JCB away from the general public as far as possible.

(Photographs were submitted to Carlisle City Council Planning Department with the application).

Both David and Julie, usually mild mannered and courteous people, were extremely upset and outraged at the way this has been handled and by the attitude of Mr Bennett. David cannot understand why no discussion took place with them before slapping a TPO on the entire site tree species. He is not against TPO's in their place but not all over the site. His intention, when time and finances allow, was to take the valuable advice given by Jim O'Neil of the Forestry Commission and gradually programme the environmental work suggested.

Instead of having a proper discussion before presenting David and Julie with a formal notice, we are now left with no option other than to appeal against the provisional order.

#### Response to the TPO

We note the contents in the Statement of Reasons and make observations on each section:

##### Reason 1

"By virtue of section 197 of the Town and Country Planning Act 1990 the local planning authority has a duty to ensure, whenever is appropriate, that in granting planning permission for any development adequate provision is made, by the imposition of conditions, for the preservation or planting of trees".

##### *Response:*

The statement in the quote is open to interpretation and much depends on why it is felt "appropriate".

The family also want to protect and enhance the woodland as explained in our submission. However, in various Acts, Statutory Instruments and Local Plans it has also been made clear that there should be a balance between development and environmental concerns. For example, Local Authorities are asked to consider whether *"the need for, and benefits of, the development in that location clearly outweigh the losses"*

In this case no further tree loss is required to provide the additional building and we made reference to retention of trees adjacent to the proposed site for the building in our planning submission.

We do not consider this a worthy reason for placing a TPO across the entire woodland

##### Reason 2

The guidance set out in the Department of the Environment Transport and the Regions document "Tree Preservation Orders, A Guide to the Law and Good Practice" states that tree preservation orders should be used to protect selected trees and woodlands if their removal would have a significant impact on the local environment and its enjoyment by the public.

*Response*

The woodland is not being removed, nor is it in danger of being removed. We would point out that the woodland is a family asset and as such it is not there to be enjoyed by the public. Unauthorised entry to the private woodland would be called trespass.

Reason 3 continued from 2

"The woodland, by virtue of its size and location is clearly visible to the public from public footpath 11403, the road through Rosebank. The woodland contributes to the character of the landscape which is classified as type 5 Lowland, sub-type 5a Ridge and Valley, a key characteristic of which is native woodland, tree clumps and plantations".

*Response:*

Please note the woodland is not clearly visible to the general public, it is "clearly visible to the public from public footpath 11403".

The Countryside and Rights of Way Act 2000 clearly states:

"Any person is entitled to enter and remain on access land for the purpose of open air recreation".

The Act does not specify that the landowner must provide a view acceptable to the person using the access facility, or classify the type of view required as part of the character of the landscape on which the footpath passes.

In this case, however, walkers albeit there are few who come through the Sawmill site, because they cannot access the next section of the path as it is so overgrown, are welcomed by a beautiful environment, excellent views across the valley and footpath access along a walkway which is beautifully tendered as part of David and Julie's garden. Then they can get no further and turn round and come back. Most of what they see is an avenue of trees. (Photographs enclosed)

*Question:*

As Rose Bank is only a very small section of the public access route, does the entire Rose Wood have a TPO placed on it?

Point 4

"Erosion of the ancient woodland site has occurred due to development pressure. To prevent further loss of the ancient woodland and to ensure the continuity of the amenity provided by the woodland a tree preservation order is considered appropriate".

*Response*

Rose Bank Sawmill has been used for business activity for over sixty years. Originally the site was the maintenance area for the 7000 acre Rose Castle Estate. David's grandfather helped set it up. In 1989 the Sawmill and cottages adjoining were

purchased by the Bowe family. David and Julie took over the running of the business in 2004 and live on the site as did David's family before him.

Anyone visiting the site comments on the beautiful environment and many on the way the business is now run. There was already erosion on the site by the very nature of the business activity over the years and following FMD in 2001 the business, agriculture dependent, nearly closed. There has been immense work put in by everyone to bring back its economic life, which in turn meant diversification and obtaining various accreditations to strengthen the customer base.

David and Julie do not consider that any action taken to make this business safer and more viable has caused erosion of the ancient woodland site. There is over 30 acres of PAWS woodland adjoining the small woodland area at the Sawmill.

Nor do they consider they have done anything wrong in enhancing the site. Health and Safety considerations have been a driver in the way the Sawmill site is set out today. Lorries are much larger and need turning areas; insurance companies have their own requirements and ISO 9001-2008, FSC and PEFC Auditors all have their demands. Carlisle City Council make annual inspections for environmental reasons and businesses have to respond to all of these external demands as well as trying to survive and ensure staff positions are protected.

Some tree removal has had to occur to keep the business viable but this has been done legally. Under Forestry Commission rules, you are allowed, without licence, to cut a % of your own timber on a calendar quarterly basis; you do not need a licence for lopping, topping, pruning or pollarding and are encouraged to engage in coppicing to provide light for ancient woodland plants etc.

A TPO from Carlisle City Council, covering all trees of all species, which does not allow you to cut down, top or lop without applying every time for permission is an unnecessary precaution and yet another time-consuming intervention, when trying to sustain a business and keep your site in order.

#### Question

Why would David and Julie Bowe want to cause wilful damage or destroy part of the environment in which they and their daughter live, work and enjoy?

#### Other considerations

Town and Country Planning, (Tree Preservation), statutory instrument 2012 No 605 Schedule Specification of trees, Article 3 page 19.

Examples of descriptions of the various categories of trees and how they should be marked on a map is shown. It is noted that Woodlands W1 and W2 is explicit in the example about the types of trees to be protected. Obviously it would depend on the specific trees in the specific woodlands but W1 as shown on the map delivered here uses a blanket "All trees of all species" grid reference 336800 546233.

The rationale behind the revised TPO administration is to streamline a cumbersome system and reduce the administrative burden on local authorities. The economic assessment says, "these will give greater clarity and reduce the administrative burden for tree owners, others affected by the Orders and authorities by virtue of operating within a simpler system".

It is unclear to us how this can be the case. If Carlisle City Council persists with this TPO in the form presented, it will become a huge administrative burden for everyone concerned because the woodland is a mixture of shrubs, fallen trees, dead and dying trees, bushes, plants etc. We would not want to make any costly mistakes:

1. We would need to know what Carlisle City Council considers to be a tree or a bush because this is not clear in guidelines, only that a bush is a tree when it looks like a tree.
2. We would require Carlisle City Council to come out every time a tree or a bush needs attention to ensure we have the correct wording in the application e.g. would we be making topping or lopping applications?
3. We would require Carlisle City Council to determine whether a tree is dead, dying or considered dangerous before applications are made for felling work to be undertaken

We could go on but we do know that Since the Church Commissioners site was cleared of its non-native conifer crop and replanted with site native mix of species, the Sawmill site has not had the cover and protection from the canopy of trees which originally existed. The adjoining site PAWS work was very necessary but the prevailing wind has done some damage to the Sawmill section of woodland and so there is much to do.

Mr Bennett as far as we know has not looked at this site in detail. To the south and north the site has good groupings of trees. The west is hedge and the east is where David took Mr Bennett to see the bushes (we think they are) which are currently overgrowing on to the gates for sale. Also to the east there are swathes of area with no trees except on the boundary of the work site. These are randomly spaced, some look dead; some look battered by the wind. (Photographs enclosed)

The avenue of trees to the north which bound the footpath are not all in good condition and need pollarding (or topping or lopping). Although they are beautiful they are hugely overgrown and cover a lot of ground which is always wet underfoot because there is no light getting through to the ground. It is to this sort of area a programme of work mentioned earlier refers. (Photograph enclosed)

This area is teeming with wildlife and David spends an enormous amount of money on keeping all the bird and squirrel feeders stocked. These are placed across the woodland and in their garden. Red squirrels, rabbits, deer, pheasants and birds of all species including a woodpecker and doves, enjoy a five star life and we enjoy having them around.

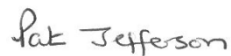


Returning to the Forestry Commission's input four years ago. We do not know if there has been a change of mind by the Forestry Commission about the programme of work previously suggested or if the TPO has been influenced during the consultation process, however, we would still prefer to follow their advice and remove the unnecessary administrative burden on the business.

There are already three covenants over this land and this last Order has been one too many. We appeal against the decision to place the TPO across the woodland site and following your procedures request that we attend and speak at Development Control if that is required.

We will contact Planning Services separately to ascertain the effect this has on the application before them.

Yours sincerely

A handwritten signature in dark ink that reads "Pat Jefferson". The signature is written in a cursive, slightly informal style.

Pat Jefferson  
Standards & Marketing Management



Mr C Bennett  
Landscape Architect/Tree Officer  
Carlisle City Council  
Economic Development  
Planning Services  
Civic Centre  
CA3 8QG

10 September 2013

Dear Mr Bennett

**Objection to Tree Preservation Order 267**

Thank you for your correspondence dated 30 August 2013 and your various explanations as to why you chose to serve the above Order.

As planning decisions are based on planning policy and not perception, it is important that we are clear about areas of your response. Could you please clarify the following for us please, as soon as it is convenient for you to do so:

1. Why was an Environmental Impact Statement required?
2. Given the advice from the Forestry Commission on 27 January 2009 what application to the Forestry Commission was required?
3. What is the significance of the timeline "1992 till recently".
4. In chronological order how has approximately 6300 square metres of woodland been lost from this site since 1992 till recently. By whom and how has that survey been conducted?
5. "No planning application has been submitted for change of use from woodland to car parking/storage". Please explain where on the site you are referring to.
6. Public Footpath 11403 – do you know how many people use this footpath annually?

Once we are in receipt of your reply a full response will be submitted before the deadline of 16 September 2013.

Yours sincerely

*Pat Jefferson*

Pat Jefferson  
Standards and Marketing Management



Rose Bank Sawmill Limited  
Registered in England No. 04955503  
Registered Office: Rose Bank Sawmill,  
Dalston, Carlisle CA5 7DA  
VAT Reg. No. 103 2170 78

Mr C Bennett  
Landscape Architect/Tree Officer  
Carlisle City Council  
Economic Development  
Planning Services  
Civic Centre  
CA3 8QG

PLANNING SERVICES	
REF	TPO 267
16 SEP 2013	
RECORDED	LJ
FORWARDED	
PASSED TO	CB
ACTION	

13 September 2013

Dear Mr Bennett

**Objection to Tree Preservation Order 2013 NO. 267  
Rose Wood, Rosebank, Dalston, Carlisle, Cumbria  
Specification - Woodland W1 – All trees of all species**

Further to our e-mail and correspondence dated 26 August and 10 September 2013. I understand that you are on holiday until the 16<sup>th</sup> September, which is the final date for submission of our objections and appeal. You will, therefore, be unable to respond to our request for further information on various statements made in your correspondence of 10 September.

To ensure compliance with the process of lodging an objection we will respond as best we can, without the benefit of your explanations.

You accept that our recent planning application which seems to have triggered the TPO does not require the removal of trees. We made it clear in the design and access statement submitted with the planning application, that we did not want any of the trees removed. The rationale behind that statement was due to the policy relating to the required distance between new buildings and trees. David (Bowe) and Janet Blair discussed the same when she came to inspect the site.

Our Architect states, in the same design and access statement that, "The proposed building will be set within the existing wooded area although there will be no felling of the existing trees as they act as a screen to development".

However, despite these assurances you consider it, "expedient in the interests of the amenity" to place a TPO across the entire woodland site because, "the future intention of the owners cannot be known".

The first and most important response to that statement, is why did you not ask?

A major thrust of your TPO is the public right of way on the edge of the Sawmill site, which you say is to be enjoyed by the public for its intrinsic beauty and visual amenity value.

Given this footpath's importance in your deliberations, we asked if a TPO was to be placed on the 35 acres of adjoining woodland, which hosts continuation of footpath No 114043 on land owned by the Church Commissioners. Your response being that, "only the saw mill site is included as this is where deforestation and unconsented development has been taking place".

Do you therefore know the intention of the current and future owners of Rose Castle and do you consider their intentions more honourable than those of a family who have lived and worked here so long?

Again, due to the importance this footpath plays in the Order, one of the questions to you on 10 September related to how many people walk footpath No 114043. We welcome walkers coming past the Saw Mill but we know that fewer than half a dozen people a year (usually with maps) attempt to take that walk. As previously explained, the path beyond us is impassable along the Church Commissioners section down to Rose Castle.

#### Deforestation and Uncontested Development

You state, "the woodland has been removed without an Environmental Impact Statement and application to the Forestry Commission and no planning application has been submitted for change of use from woodland to car parking/storage".

We will try and fathom these statements and respond as best we can, although we may still need an answer to questions which were submitted to you on 10 September 2013.

#### Environmental Impact Statement

We have made our position clear in the earlier submission on 26<sup>th</sup> August 2013. There is an assumption in your statement that David and Julie have actually required an Environmental Impact Statement. Why is this?

#### Application to the Forestry Commission

David's clear understanding, when you attended the joint meeting in 2009 with Jim O'Neil and himself, is that it was stated by the Forestry Commission Officer that Mr Bowe could legally remove a % of trees for his own use and based on this, it was his understanding that the ruling was, "in any calendar quarter, you may fell up to 5 cubic metres on your property without a licence as long as no more than two cubic metres are sold". You say there is no % of felling allowed on ancient woodland. Was that meeting not the time to disagree with the Forestry Commission's position on felling?

For the purpose of clarity, Mr O'Neil was not defending the felling of trees but explaining the legal position because David was asking for pre-planning application advice. That particular planning application would have required the removal of a few trees. The current extension application is smaller.

Please can you advise which piece of legislation says there is no allowance to fell any % of ancient woodland as I cannot find it amongst the plethora of rules and regulations.

#### Requirement for a Planning application car parking/storage – change of use

As far as we are concerned no change of use has occurred on this site, so why would we need to submit a planning application for car parking and storage? The business has been here since the 1940's and when the family took it over in 1989 it continued as the same business, even taking on existing staff. Granted today it is more efficient and responsive to its customers but is that not what businesses are supposed to be doing?

Planning permission was given for changes on this site for a new office and those plans included the demolition of a shed at the entrance to the site, which blocked the pathway of increasing size vehicles.

#### Car parking

We are not aware that we have a specific car park. Cars, lorries, tractors and trailers have come into this yard as long as the business has been here and customers have parked wherever was convenient. David even recalls his grandfather's tales of horses and carts coming on site.

Today in the interest of customer care and health and safety, when a vehicle comes into the yard the customer comes into the office, lets us know what they want and then we radio the site manager who attends to the customer. If the customer needs to take their vehicle to the timber for collection along the yard, they do so. If they want us to cut timber to take away in their vehicles then they go and park close to the shed where the cutting takes place. The site manager radio's the office to say what the customer has purchased and payment is made at the office.

#### Storage

We are not clear what you mean by storage. If you are referring to timber storage, this has always been stored around the yard as it is air dried. Is that what you are referring to?

#### 1992 till recently

Your statement, "that since 1992 there has been a gradual loss of woodland which has continued till recently. Approximately 6300 sq. metres of ancient woodland has been lost from the site. Which equates to nearly 50% of the wooded area on the saw mill site".



This statement is very specific so could you please explain the significance of the year 1992 and inform us when, how and by whom, information was gathered to make an assessment that 6300 sq. metres of ancient woodland has been lost from this site during that time-line.

The entire Rose Bank Sawmill site is 4.8 acres. By your calculation the wooded area would be 3 acres approximately of the 4.8 acres in 1992. So are you saying that the business was run on something the size of a football pitch?

We cannot agree with your calculations but we can explain why areas of woodland, which are not used for business activity and which we consider to be Rose Wood have been, in your words "subject to deforestation". Firstly, a small number of trees, in the interest of site safety have been removed from the south west corner of the site. As previously stated, David understood he could.

As compensation, he then added a new feature on the same area of the site. This is a 'traditional Stewardship mix' hedgerow, made up of approximately 70% hawthorn, 20% blackthorn, plus crab apple, hazel, field maple and dog rose. This provides a visual screen and shelter belt between the sawmill yard and the neighbouring Church Commissioners land and houses and provides further nesting and feeding opportunities for birds and small mammals.

He has also cut back willow bushes and tree branches overhanging the site from the woodland and taken out a very small number of damaged trees. The major devastation to the woodland and trees on this site, however, were not by his hand but by acts of nature.

On 7/8 January 2005 storms invaded the Saw Mill site. From the west side of the yard the storm took out a clump of leylandii trees, missed the oak tree which stands proud in the centre of the yard, took out another clump of trees on the east boundary of the wood and then continued on a north easterly course across the woodland, flattened trees and bushes on route.

With that area of woodland opening up, a small orchard has been planted with apple trees, pears, plums, cherries and damsons.

The position of this Sawmill and woodland on hillside overlooking a valley will always be affected by extreme weather conditions and this with the accompanying loss of cover of the main Rose Wood, until it grows again, leaves the Sawmill site even more vulnerable. It is not uncommon on very windy days to find timber strewn across the yard but you have to work with the elements. A TPO will not prevent natural loss, nor will it help manage the woodland.

All trees of all species

I am fully aware that the examples given in the Town and Country Planning (Tree Preservation) (England) Regulations 2012 did not relate to Rose Wood. The point I was making that in their example document there appeared to be a process of selecting specific trees in woodlands. You suggest that imposing a TPO on "all trees of all species", is a means of leaving no room for misinterpretation. We would consider that to be an easy option for the person placing the Order and a minefield for the woodland owners.

We are in agreement that there is no definition of a tree or woodland in legislation. We are however, somewhat surprised when you tell us that a seedling would be protected to the same extent as a large mature tree.

We note Carlisle City Council follows the interpretation of the Courts and wonder if a case has ever been brought against a landowner or walker for standing on a seedling?

In our first submission we told you that there are already three covenants on this land. One of those covenants allows the local Shoot, who use the main Rose Wood for pheasant shooting, to have rite of passage through and over the Sawmill section of woodland as part of their sporting activity. Shooters, Beaters and dogs use the wood each Thursday and Saturday during the shooting season. We can do nothing about this and certainly have no intention of facing a shooting party to ask them not to stand on a seedling. Would you like to tell them?

We maintain that placing this albeit provisional TPO on this family owned piece of woodland and business is out of order. Not because of a desire to cut down trees but the way this has been handled and the total lack of respect for the intelligence of David and Julie in that, as business owners, they cannot judge for themselves when a tree needs to be managed without coming to the Local Authority for permission.

I think an extract from an article written by Natural Benefits for Business Awards in 2009, portrays the family belief system:

"The primary reason that Rose Bank Sawmill became involved with the Natural Benefits for Business pilot was that the Bowe family feel that the business should operate in a sustainable way.

Initially David built a number of bird boxes, but soon realised that he could build a variety of other boxes using the Sawmill's FSC timber, so the woodland adjacent to the Sawmill now has many different boxes designed to provide nest sites for a range of birds.

One problem that became apparent in the early stages was a great spotted woodpecker, a regular visitor to the site, who has been given the name of 'The Architect' by the Bowe family. This is in recognition of his determination to redesign the entrances to all the boxes by pecking away until the holes are too large; a habit that David describes as "a woodpecker working without planning permission". Whilst David and his family are happy to see this attractive bird visiting the bird feeders, he is now tackling the nest box problem by installing Perspex plates with holes of the right size on all the boxes in the hope that the bird will not find this such an attractive material to peck!

David's ingenuity is also in evidence in the red squirrel feeders he has devised and built for the site. The design evolved over time as he has tried to provide food to the native red squirrels whilst excluding the non-native grey squirrels that are now invading Cumbria. The final version has a mesh front with holes of a size that allows the smaller reds to access the nut and seed dispenser inside the box. The dispenser itself went through a series of development stages until a successful design emerged that provided a steady supply of fresh food but minimised spillage and waste.

The many species of birds that visit Rose Bank are catered for with an impressive range of feeders including dispensers for peanuts for nuthatches, blue tits, great tits and coal tits, sunflower seeds for chaffinches and green finches, niger seed for goldfinches and siskins and 'soft bill' mix for robins, blackbirds and thrushes. David has noticed an increase in the species of birds he sees since setting up the feeders".

I re-iterate a question asked in the first submission:


"Why would David and Julie Bowe want to cause wilful damage or destroy part of the environment in which they and their daughter live, work and enjoy?"

Mr Bennett, this is confirmation that we are not able to withdraw the appeal, despite you telling David that if he appealed the planning application would be put on hold and the City Council would make him turn the area back to Ancient Woodland.

We will ask to come before the Development Control Committee to speak at the appropriate time. Businesses are struggling enough without all the added external complications, which are expensive, time consuming and a distraction from the main purpose of the business which includes staff retention through good times and bad.

We are asking the Council to revoke this order for all reasons stated in our objection and appeal process communication.

Yours sincerely



Pat Jefferson  
Standards and Marketing Management

Copy to Mr Mark Lambert, Head of Governance, Carlisle City Council.



Mrs Jefferson  
Standards and Marketing Management  
Rose Bank Sawmill  
Dalston  
Cumbria  
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**Please ask for:**

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**Our ref:**

Charles Bennett

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CB/TPO 267

30 August 2013

Dear Mrs Jefferson

## **OBJECTION TO TREE PRESERVATION ORDER 267**

I refer to your letter of objection dated 26 August 2013 to the making of Tree Preservation Order 267, Rose Bank Sawmill. In your letter you raise several objections to the making of the Order. I have summarised these below, and respond to them in the same order.

- The Town and Country Planning Act 1990 s197 is open to interpretation as to when it is “appropriate” to make a tree preservation order.
- There should be a balance between development and the environment.
- No further tree loss is required to provide the building subject to the current planning application.
- The woodland is not being removed, nor in danger of being removed.
- The woodland is not there to be enjoyed by the public.
- The woodland is not clearly visible to the public.
- Does the entire Rose Wood have a tree preservation order placed on it.
- Tree removal has been in accordance with the Forestry Commission guidelines.
- The tree preservation order is an unnecessary precaution requiring repeat applications.
- That the description of the woodland should be more explicit as in the examples given in the Town and Country Planning (Tree Preservation) (England) Regulations 2012.
- What does the Council consider a tree.
- The Council would be required to make pre-application site visits.



I have the following comments to make in response;

- When it is considered appropriate to make a tree preservation order is a matter of judgement for the local authority however, it must be expedient in the interest of amenity to do so. In this instance it was considered expedient due to the loss of the ancient woodland and the consequential loss of amenity and effect on the character of the area in which such woodlands are an important feature.
- The balance between the environment/loss of ancient woodland and the benefits accrued from any planning consent is considered during the planning application process. On the saw mill site portion of Rose Bank wood no such balance has ever been considered as the woodland has been removed without an Environmental Impact Assessment and application to the Forestry Commission, (I will return to this matter later), and no planning application has been submitted for change of use from woodland to car parking/storage, although necessary. It should be noted that in both national planning policy and local planning policy there is a strong presumption in favour of the retention of ancient woodland sites, and planning permission would normally be refused for such sites.
- Whilst there may be no need to destroy any more woodland for the purposes of the current proposal the future intention of the owners cannot be known. Taking into consideration the extent of the loss of the ancient woodland over several years it is appropriate to protect the woodland to prevent further loss.
- Since 1992 there has been a gradual loss of the woodland which has continued till recently. Approximately 6300m<sup>2</sup> of ancient woodland has been lost from this site. Which equates to nearly 50% of the wooded area on the saw mill site.
- Although the woodland is in private ownership it can still be enjoyed by the public, both for its intrinsic beauty and as a visual amenity as seen from the adjacent path and surroundings.
- Public footpath 11403 runs adjacent the woodland, which is clearly visible.
- Only the saw mill site is included within the tree preservation order as this is where the deforestation and unconsented development has been taking place.
- The saw mill site has been the subject of deforestation (as mentioned above at bullet point 2). This requires an environmental impact assessment and an application to the Forestry Commission for consent. There is no allowance to deforest any % of ancient woodland.
- As previously stated the tree preservation order is considered necessary to prevent the further loss of the ancient woodland. The Order will not prevent good woodland management. Whilst an application will be required to carry

out works to trees any consent can be conditioned to ensure that repeat activities can be carried out over a period of years without the need for repeat applications.

- The examples given do not relate to Rose Bank Wood. Neither are they precise but open to interpretation as to exactly what is and isn't protected. The "all trees of all species" description leaves no room for misinterpretation and as such is much clearer.
- There is no definition of a tree or woodland in the legislation. However, this has been considered by the courts. The two cases that are relevant are *Bullock v Secretary of State* 1980, and *Palm Developments Ltd v Secretary of State* 2009. To summarise, a tree is anything that one would ordinarily call a tree, oak, sycamore, willow, etc. It follows that bushes such as elderberry are not trees and the tree preservation order would not apply. There is no size limit to a tree protected by the preservation order, so a seedling would be protected to the same extent as a large mature tree. The Council follows the interpretation of the Courts.
- Officers of the Council will make a site visit in response to any application to fell a tree. Pre-application visits at a mutually agreeable time and date are also welcomed.

I trust I have been able to answer your questions, you are able to better understand why the Local Authority made the tree preservation, and are able to withdraw your objections.

However, if you are unable to withdraw your objection the tree preservation order will go before the Development Control Committee who will decide whether or not it should be made permanent.

If the tree preservation order is to be determined by Committee the press and public may attend the meeting. Copies of the Committee Reports and background information (including petitions, letters of objection and support) will be available for those attending. If you wish to know when the application is going to Committee please check online or contact the Case Officer. A list of the forthcoming Committee dates is available on the website.

The City Council enables, in certain circumstances, objectors to applications for Planning Permission, Listed Building Consent, Advertisement Consent, Conservation Area Consent and in relation to Tree Preservation Orders a "right to speak" when an application is decided at the Development Control Committee. This right to speak also entitles Applicants or Agents to respond. A copy of the leaflet "Carlisle's Scheme for Public Speaking at Development Control Committee" is available from Planning Services or you

can access it via the Planning Applications page on the City Council's website:  
[www.carlisle.gov.uk](http://www.carlisle.gov.uk)

If you wish to register a right to speak it must be done after the date that the Committee schedule is published (i.e. 8 days prior to Committee). The deadline for registering this is 12.00 (noon) on the Thursday before Committee. You cannot register a right to speak ahead of the Committee schedule being published. In order to register please contact either Karen Greig (tel: 01228 817112 email: [karengr@carlisle.gov.uk](mailto:karengr@carlisle.gov.uk)) or Michelle Sowerby (tel: 01228 817482 email: [michelles@carlisle.gov.uk](mailto:michelles@carlisle.gov.uk)). Please note that the scheme only allows 5 objectors the opportunity to speak on each application. Please check the leaflet for full details or contact the Case Officer if you require further information.

Yours sincerely

**C Bennett**

Landscape Architect/Tree Officer

**Copy to :** Mark Lambert, Director of Governance, Carlisle City Council

**CARLISLE**  
CITY COUNCIL



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Mrs Jefferson

**Please ask for:**

Charles Bennett

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CB/TPO 267

16 September 2013

Dear Mrs Jefferson

## **OBJECTION TO TREE PRESERVATION ORDER 267**

I refer to your further letters of objection dated 10 and 13 September 2013 to the making of Tree Preservation Order 267, Rose Bank Sawmill. In your letter of the 10 September 2013 you raise a number of questions. I have summarised these below, and respond to them in the same order.

- Taking into account the advice of the Forestry Commission why is there a need for an Environmental Impact Assessment, and the need for the consent of the Forestry Commission to undertake deforestation.
- What is the significance of the timeline 1992 to recently. What is the chronology for the woodland loss over this period.
- Which part of the site has undergone a material change of planning use.
- The frequency of use of footpath 11403

I have the following comments to make in response;

- I was not privy to the advice provided by the Forestry Commission to which you refer so am unable to comment on it. However, if you wish to undertake deforestation i.e. felling woodland to use the land for a different purpose, you must undertake an Environmental Impact Assessment and get the consent of the Forestry Commission. This is a legal requirement under the Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999. I would advise you to contact the Forestry Commissions North England office on 01434 220242 for further information on how the Regulations apply to you.
- The City Council have aerial photographs of the area from 1992 onwards which clearly shows the extent of the deforestation of the site over this time period. The deforestation has clearly been incremental but the timeline of the deforestation is irrelevant. It is the fact that it has occurred at all that is relevant. The extent of the deforestation can be measured from the aerial imagery.

- All the site that has been the subject of deforestation and changed to parking/storage etc has undergone a material change of use for which planning permission would be required.
- The guidance on making tree preservation orders says that the trees, or at least part of them, should normally be visible from a public place, such as a road or footpath. Frequency of use of the footpath is not a material consideration.

In your letter of the 13 September 2013 you raise the following issues;

- The recent planning application Ref. 13/0576 does not require the felling of trees.
- Am I privy to the future intentions of the Church Commissioners in respect of the remaining area of Rose Wood.
- Fewer than six walkers use the path annually.
- The need for an Environmental Impact Assessment and planning permission.
- Felling of a % of trees and the exemption for the need for a felling licence for felling less than 5 cubic metres of timber. There has been no change of use that requires planning permission. Car parking and storage areas.
- Loss of woodland, and the extent of that loss since 1992.
- The “all trees of all species” description and the Courts interpretation of what constitutes a tree.

I have the following comments to make in response;

- The current planning application does not require the further felling of trees because those that were in the way of the proposal have already been felled and the land deforested.
- It is not possible to know the future intentions of landowners. However, over the past 20 years there has been a history of ancient woodland loss at Rosebank Sawmill, including the felling of trees on the site of the current proposal subject to planning application 13/0576.
- As mentioned above the frequency of use of the footpath is not a material consideration.
- As mentioned above where land is deforested you are required to undertake an Environmental Impact Assessment and get the consent of the Forestry Commission. Changing the use of the land from woodland to car parking and storage is a material change of planning use and requires planning permission.
- Whilst there are thresholds below which you do not need an Environmental Impact Assessment before carrying out deforestation, these are expressed as areas, e.g.; 1 hectare, 0.5 hectare, not as a percentage. None of the thresholds apply to ancient woodland sites. You can fell 5 cubic metres of

timber in any one calendar quarter without the need for a felling licence, there is no percentage of timber that can be felled without a licence. However, once you have felled the 5 cubic metres of timber the land remains woodland, and trees either re-grow as coppice from the cut stumps, from seeds, or are planted back on the land ensuring the continuity of the woodland area. If the area of land from which the trees were removed is taken out of forestry by placing hardcore over it and using it for storage and car parking then it has been deforested, which in the case of ancient woodland would require an Environmental Impact Assessment, the consent of the Forestry Commission, and a planning application for change of use.

- The loss of woodland and extent of that loss has been covered earlier in this letter.
- Using the description “all trees of all species” leaves no doubt for either party which trees are protected. Whilst the Courts have decided that a tree is a tree even when it is a seedling, common sense has to be applied. The purpose of the tree preservation order is to prevent further loss of the woodland area, not to seek the prosecution of someone for standing on a seedling.

Whilst there is a time limit for submitting objections I will always consider objections up to the time a decision is made on whether or not to make the order permanent. Therefore, please do not hesitate to comment further.

I trust I have been able to answer your questions, you are able to better understand why the Local Authority made the tree preservation, and are able to withdraw your objections.

However, if you are unable to withdraw your objection the tree preservation order will go before the Development Control Committee who will decide whether or not it should be made permanent.

If the tree preservation order is to be determined by Committee the press and public may attend the meeting. Copies of the Committee Reports and background information (including petitions, letters of objection and support) will be available for those attending. If you wish to know when the application is going to Committee please check online or contact the Case Officer. A list of the forthcoming Committee dates is available on the website.

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Yours sincerely

**C Bennett**

Landscape Architect/Tree Officer

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