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County Hall
Morpeth
Northumberland
NE61 2EF

William Sharp
[REDACTED]
Hebron Hill
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16th March 2023

Dear Linda,

Re: Notice of making a Tree Preservation Order (No.01 2023).

I am writing to submit objection, in accordance with Regulation 6 of Town and Country Planning (Tree Preservation) (England) Regulations 2012, with regards to your reference 020118, named: The Northumberland County Council (Land at Hebron Hill Farm, Hebron, Morpeth, Northumberland) Tree Preservation Order 2023 (No.01 of 2023) Town & Country Planning Act 1990, Town and Country Planning (Tree Preservation) (England) Regulations 2012, served dated 10th January 2023. The objection should be considered for the: TPO in its entirety, TPO categories, selected individual trees and any perceivable combination of parts. This objection should be considered in addition to a formerly submitted Hebron Hill Management Company (HHMC) objection.

The primary issue to consider is the validity of the Tree Preservation Order (TPO) at Hebron Hill (HH). The Council may make a TPO *“if it appears to them to be ‘expedient’ in the interests of ‘amenity’ to make provision for the preservation of trees or woodlands in their area’*. In the Reasons for Making the Order, the Council state that, *“The Council has made the Order because the Woodland areas and tree groups are prominent features within the surrounding landscape and valuable visual assets to the Farm and entire location, contributing to the visual amenity of the area”*. This statement holds error and does not constitute suitable grounds for Making an Order in accordance with the law on Tree Preservation Orders as in Part VIII of the Town and Country Planning Act. Whilst ‘Amenity’ is not defined in law, it is defined in TPO act *“authorities are advised to develop ways of assessing the amenity value of trees in a structured and consistent way, taking into account the following criteria”* the act proceeds to list and detail many parameters. The Council have identified two defined parameters of ‘amenity’ within their Reasons for Making the Order, stating the HH trees are *“prominent features within the surrounding landscape”* and *“visual assets”*. The HH trees constitute approximately 0.2% of the trees within a 2km radius, therefore it must be reasoned that HH trees are not prominent features with the surrounding landscape. I predict the Council are mistakenly considering the respective visibility of HH trees for their contribution to the landscape, however with this notion *“Are all trees on elevated land worthy of TPO?”* this is not a factor mentioned in the TPO act and I highly doubt this would be acceptable. Visibility has its own consideration and consequently cannot be factored twice for two independent parameters. That being the case, correctly excluding the statement ‘contribution to the surrounding landscape’ from the Reasons for Making the Order, leaves only the parameter of ‘visibility’, this itself will be discussed later in the objection. The law clearly states *“Public visibility alone will not be sufficient to warrant an Order”*, as there are no other recognized ‘amenity’ parameters stated within Reasons for Making the Order, the TPO is deemed unsuitable by law and therefore should be *“Not Confirmed”*.

Notwithstanding the fact the Council have failed to show grounds that legally achieve “amenity”, I would like to identify further discrepancy from the TPO act, which should be considered when assessing the validity of the TPO. The law states *“Although some trees or woodland may merit protection on amenity grounds it may not be expedient to make them the subject of an Order. For example, it is unlikely to be necessary to make an Order in respect of trees which are under good arboricultural or silvicultural management”*. HHMC and respective residents of HH, collectively own and are responsible for the trees subject to the Order. HHMC have and can clearly demonstrate exceptional arboricultural management. HH trees are subject to regular arboricultural survey, conducted by an expertly qualified arboriculturist. All recommended remedial works are conducted by an independent expertly qualified arborist, who ensure compliance to both forestry regulation and BS3998 (recommendations for tree works). Given the clear arboricultural management, the TPO is an unnecessary and superfluous ruling. *Unless the Council are questioning the ability and record of qualified industry experts?* Which I doubt to be the case, although some communications have expressed notion to this viewpoint. There has been no harm and no intention to cause harm to any HH trees; HHMC practices and procedure prevent any risk for future harm. In fact, HHMC and residents, wish to conduct native regeneration and have intentions to plant trees at HH; it is the natural environment that attracted many of the residents to purchase their houses at HH, and the residents are acutely aware it is the nurturing of the environment that will maintain the appeal of HH. It should be further noted that HH trees are protected by Forestry regulations in the UK; this would, by law, prevent harm to HH trees. The proven absence of “Expediency” in practice and significantly the absence of any ‘Expediency’ by the Council within their Reasons for Making the Order, further indicate the TPO lacks validity and is unsuitable by law, consequently the TPO should be “Not Confirmed”. It is prudent to further state there are many instances of case law, namely “Gilman v Rutland County Council”, where judge ruling stated, if there is no risk of felling, a TPO should be “Not Confirmed”. I believe HHMC and residents have clearly shown comparative circumstances and therefore applying this precedent, the TPO at HH should be “Not Confirmed”.

When accessing the ‘visual’ parameter to ‘amenity’, we must consider and review several factors in more detail. The TPO act defines ‘amenity’ for the *“enjoyment by the public”*. All ‘amenity’ parameters, specifically the ‘visual’ receptive, as this is the Councils only recognized and valid ‘amenity’ parameter within the Reasons for Making the Order, therefore it must be recorded from the public perspective at public accessible locations. However, the Council conducted their Tree Evaluation Method for Preservation Orders (TEMPO) survey on HH private land, which is obviously not accessible to the public. The TEMPO results are consequently inaccurate and have been a misleading source of information when making the TPO. The TEMPO survey should be revised and validated before admission and use by the Council. The use of TEMPO will be discussed further in subsequent section. The TPO act further details the Council *“should be able to show that protection would bring a reasonable degree of public benefit in the present or future”*. This statement clearly implies there must be a substantiated degree of public benefit. I must question *“can a ‘reasonable degree of enjoyment’ be achieved from only visibility”*? I would conclude the public would require interaction over and above mere ‘visibility’ or at least the ‘visibility amenity’ would need to be very considerable. HH is private land, surrounded by private farmland, and whilst HH is situated on elevated land that can be seen from a distance, it is fact, as distance increases ‘visibility’ quality decreases and therefore the ‘amenity’ value would also decrease. This would not achieve a ‘reasonable degree’. At closer locations accessible to the public, many viewpoints remain at a distance and have restricted views, hence the ‘amenity’ value continues to be impacted. There are many trees included in the TPO which are not visible to public at all, they offer no public ‘amenity’ and these are not principle trees without which HH trees would lose its cohesion. The inclusion of these trees in the TPO is highly questionable.

Considering these objections individually or as a whole, it is highly questionable if 'visibility' even plays a role towards the 'amenity', it is certain the 'visibility' which is present, does not achieve a 'reasonable degree' or could constitute as 'reasonable enjoyment' from a public perspective. Furthermore, it is questionable if 'visibility' should even be a parameter of 'amenity'. First recorded in 1610, it is a long-established principle in English law, that a landowner cannot protect the view that he has from that land. I am pleased to think HH trees may provide public 'amenity', however by law the public have no 'entitlement' to this 'amenity' as they similarly have no 'entitlement' to protect their view.

The Council have adopted TEMPO survey as their method for assessing 'amenity'. TEMPO was developed by Julian Forbes-Laird (JFL) of FLAC associates, it is a working document which continues to be improved based on feedback. It is not a legally authorized or recognized tool but is one of several methods within the arboricultural industry. TEMPO is owned by JFL but is free to use, guidelines have been created for proper conduct, NCC are not an affiliate or a client of FLAC. *"TEMPO is designed as a field guide to decision-making"* it should not be adopted in exclusivity but may form as one of many tools in the determination of a TPO. This is a point noted in the guidelines *"Clearly, other reasons apply that might prevent/usually obviate the need for the making of a TPO"*. These *"other considerations are most suitably addressed as part of a desk study"*. The TEMPO report, which was incorrectly conducted from private land, is the only document that has been provided by the Council in their justification of the TPO. This point and the preceding facts stated in this objection, evidently show that 'other considerations' have not been considered. The TEMPO guidelines further caution, the method *"is supposed to function as a guide and not as a substitute for the surveyor's judgement"*. and *"it should be stressed that the method is not prescriptive except in relation to zero scores: TEMPO merely recommends a course of action. Thus a tree scoring, say, 16, and so 'definitely meriting' a TPO, might not be included for protection for reasons unconnected with its attributes"*. Numerous qualified experts in the industry, have stated HH does not require a TPO (please see appendix statement from Jim Richardson BSc For. HND. Arb). Perhaps the TEMPO survey being a quick 'field guide' *"presented on a single side of A4"* has not enabled the surveyor to adequately assess HH trees, or perhaps the surveyor's judgement has not been subsequently considered in the making of the TPO, but there is a clear disparity between the Council and industry expert opinion. Personally, I question *"how a one hour TEMPO survey can compare with, a qualified experts, multiple day, Woodland Management report?"* I deduce that HHMC and their expert consultants have a far higher understanding of HH trees than the Council. The TPO act states the Council should record *"trees which are not to be included in the Order"*, a TPO should not protect: dead, dangerous, poor form or low life expectancy trees. TEMPO guidelines also reiterate this fact *"Dead, dying or dangerous trees should not be placed under a TPO"*. The Council have protected all HH trees, including many dying, dead, dangerous and diseased trees, this is a sign of error. TEMPO does include opportunity to score 'Expediency', this is questionable, as determining 'expediency' is a desk top study and not a field assessment. The Council have scored 'expediency' as a 'foreseeable threat' stating they are in receipt of 'representations'. I can confirm that HHMC, who govern HH trees, were not contacted by the Council at the time of TEMPO survey. The source and validity of these representations and consequently the 'expediency' scoring is particularly intriguing, perhaps it is based on hearsay or maybe it is further surveyor error. The absence of 'expediency' in the Reasons for Making the Order' show the Council have acted against their surveyor, questioning the TEMPO validity themselves. JFL has been provided with details that form this objection, he has stated he would be willing to conduct a desk-top review and offer preliminary advice under a consultancy service. It is worth noting JFL and FLAC will not take on *"appeals that cant – or shouldn't – succeed"*, their willingness to take HHMC and/or residents as a new client, shows substance of the objection.

Whilst it should be applauded that the Council seek to utilize a standardized method, it is clear this method is not without fault, it has been applied incorrectly, it has been utilized exclusively and it has disregarded expert qualified judgement.

The TPO act states *“Whether or not they make an Order, authorities can consider encouraging landowners to bring their woodlands into proper management”*, implying adequate woodland management offer suitable protection and a woodland TPO may not always be required. Of course, this objection has already proven HHMC woodland management and hence again it is recommended that the TPO be “Not Confirmed”. A woodland TPO is notoriously difficult to manage and to enforce, this is clear in multiple case law, its practicality in a residential setting such as HH would not usually be recommended. The council have utilized two large woodland categories across the site, the boundaries of the woodlands extend to within 3m of residential properties. The woodlands predominantly consist of Sycamore and Beech species, it is recommended that Sycamore and Beech should not be planted within a 15m proximity of buildings. A woodland category protects *“trees and saplings which grow naturally”*, if you would not plant a tree within a designated proximity to a building, it would seem irrational and irresponsible to protect a naturally planted tree within the same proximity. It is clear the boundaries of the ‘woodlands’ should be reduced away from residential properties. Furthermore, within the Councils ‘Growing Together: A strategy for the management of NCC trees and woodlands’ document, the *“regeneration of non-native tree species such as sycamore, beech”* is specifically noted as a threat to woodlands or as a problem causing poor woodland condition. I cannot comprehend why the Council would use a woodland TPO, directly conflicting their own management strategy document. If the council persist for a TPO, despite the numerous indicators throughout this objection, the woodlands should be re-categorized into several group categories. Group categories will better align with TEMPO which states to score *“those principle trees without which the group would lose its aerodynamic or visual cohesion”*, whilst also enabling improved woodland management, native regeneration and proactively protecting residential properties.

There has been no required intervention of the Council or need for a TPO throughout the history of HH. This extends from when HH was an operational and derelict farm, during change of ownership when the developer acquired land and gained planning permission, during the renovation and construction of HH residential properties, or since the latest change of ownership and the past 5 years of HHMC and residential governance. A TPO may have been applicable to previous ownership; the historical land use and development would have far higher likelihood of risk to HH trees. An arboricultural report did accompany development plans in 2011, upon significant change to the development in 2017, the Council approved plans without reconsidering or enforcing revision of the arboricultural report. It should be noted that properties now reside within arboricultural constraint zones identified in the 2011 report. The current ownership clearly demonstrates no risk and therefore Council intervention and a TPO at this stage is far from understood. As previously stated, the current ownership exhibits exceptional arboricultural management and a TPO is an unnecessary and superfluous ruling. In fact, it can be shown that the Council has no interest in Hebron; Local policy documents ‘Green Infrastructure Strategy’ does not recognize HH trees at all, (it does notably identify a large nearby ancient woodland, which is not TPO protected), whilst the ‘Northumberland Key Land Use Impact Study’ also fails to identify Hebron, it is included as a larger region and this region scores amongst the lowest for landscapes potentially requiring additional protection in Northumberland. Review of TPOs for the last 10 years show no TPOs within 2km radius of Hebron. Considering the above information, in collaboration with previously stated information relating the TPO validity, I consider the Order to be discriminatory and prejudicial. I refer to TPO no.03 of 2017, where

Northumberland Planning Committee set precedent by “Not Confirming” a TPO under similar circumstance and objections.

TPO no.01 of 2023 is not the first attempt to make a TPO at HH. Previously, TPO no.06 of 2022 was made and “Not Confirmed”. The TPO act recognizes the disproportionate allocation of power to the Council and therefore they must exhibit exceptional moral responsibility *“Authorities should bear in mind that, since they are responsible for making and confirming Orders, they are in effect both proposer and judge”*, in recognition, the law specifically cautions the Council to its process. *“They should therefore consider how best to demonstrate that they have made their decisions at this stage in an even-handed and open manner”*. TPO no.06 of 2022, did not comply with the TPO act; the decision process was not ‘demonstrated in an even-handed or open manner’, it was conducted by delegated authority within the planning department, away from council planning committee and consequently also breached Article 6 Civil Rights and Obligations, the right to *“a fair and public hearing from an independent and impartial tribunal”*. *“Many TPOs have been discussed at Planning Committee, why would the Council choose not to hold formal proceedings in this case?”* The formal response to TPO No.06 of 2022 did not provide any Information; merely informing the public the decision to “Not Confirm” was based on objections received. TPO no.06 of 2022 and TPO no.01 of 2023 do not contain any explanation or evidence to substantiate their validity, therefore several Freedom of Information (FOI) requests have been raised to obtain required information for understanding of the TPO. The Council have selectively provided information, including: TPO registers and records (notably omitting successful TPO objection no.03 of 2017 which they could not ‘find’, curiously I have since managed to easily find this in their online records), and they have provided the TEMPO survey for TPO no.06 of 2022. All other FOI requests are either; significantly outstanding beyond their legal limit or have been refused entirely. *“What tree information does the Council hold, which is too sensitive for disclosure to the public? especially when redaction can be utilized”*. I believe the action of the Council breach both FOI Environmental Information Regulations (EIR) and the TPO Act. The failure by the Council to disclose information and suitably prove or validate HH TPOs, is restricting the public ability to form competent objection or representation. The Council must therefore be held to equal standards; It is expected that both past actions and future action of the Council must be explained and must solely rely on disclosed public information. If the Council introduce, modify or rely on contained information, to explain past actions or future decisions, this would not be considered a ‘fair trial’ as the public opportunity and right to comment on this information has been withheld. *“Authorities cannot confirm an Order unless they have first considered any duly made objections or other representations”*. It is also noted that *“Authorities can confirm Orders, either without modification or with modification”*, due to the Council having no grounds for making a TPO, it is clear the existing TPO would require significant modification and likely additional undisclosed information for validation. In this case, it should be further noted *“The Authority should not confirm an Order it has modified by adding references to trees, groups of trees or woodlands in the Schedule to the order or the map to which the Order did not previously apply. Nor should the authority confirm an Order if it has made substantial changes to it”*. It would be considered a substantial change should the Council modify the Reasons for Making the Order or alter the category, references or map included within the Order. What was included in the TPO is considered to be deliberate and similarly, what was not included is also considered to be deliberate. It would be a substantial change if the Council introduce new undisclosed information, either to public record or to the form of the TPO, and rely on this information for validity.

This TPO objection clearly identifies that a TPO should be “Not Confirmed”. The Objection is not comprehensive; there are many other discrepancies of the TPO act which are not stated. The Council

has been encouraged by HHMC and myself to engage in formal meeting, to discuss all objections and representations, as per TPO guidelines *“Discussion between the LPA and any person who makes an objection is encouraged. Discussion can lead to a greater mutual understanding of each side's point of view. This in turn can help clarify the main issues which will have to be considered by the LPA before they decide whether to confirm the TPO”*. To date this proposal, disappointingly, continues to be rejected by the Council. There are concerning: process, procedural and conduct issues from the public and Council officers which have not been referenced in this Objection. It should be noted, Social Ombudsman do see potential malpractice and have elected to conduct formal investigation. The Council have not extended the TPO objection deadline to accommodate the resolution of outstanding information, appeals and formal investigations. This is against the wishes of planning councilors and the regional MP, who recognize that these are contributing factors and upon their resolution, the public should have opportunity to comment in their objection or representation. This objection has consequently been restricted, and this is another factor which should be considered in the determination of the TPO.

APPENDIX: Jim Richardson Email

From: [REDACTED] >

Sent: 15 March 2023 16:00

To: [REDACTED] >

Subject: [EXTERNAL]: RE: TEMPO

Dear [REDACTED],

Further to previous correspondence regarding the TPO at Hebron Hill, I can confirm that Woodsman has been engaged by the Hebron Hill Management Company to assist with tree management operations across the site.

We have provided an immediate needs assessment report in February 2022, following storm damage across the site and a more comprehensive Woodland Management report in October of 2022 with works recommendations relating to both risk management and long-term management of trees across the site. We will continue consultancy and survey on an ongoing annual basis. Underplanting and an increase in species diversity are clear objectives of the future management. The retention of the trees for shelter, wildlife value and amenity are all unquestioned. HHMC have been exemplary in following recommendations.

With regards to the application of a TPO to the Hebron Hill trees I have the following observations.

- The trees under management of the Hebron Hill Management Company (Woodland Groups W1&W2, and Group G1) are protected by the Forestry Act. Any significant works to these trees would require a felling licence at the discretion of the Forestry Commission, this offers these woodland groups considerable protection. Further to this, the nature and structure of the management committee also offers tree protection. These woodlands and groups are clearly not under threat and are being responsibly managed.
- The most significant threat to the sites trees was during the re-development of the site.
- For trees in private gardens (Groups G2-G5) there may be some case for TPO protection. These trees are not protected by the co-operative of the management company. Woodsman services do survey all private gardens and owners have followed all consultancy recommendations. These groups are not under threat and are being responsibly managed.

Please feel free to use this email in any representations you make as an appeal to the TPO in its current form.

Kind Regards,

Jim Richardson. BSc For. HND.Arb.

[REDACTED]

Please note all provisional survey schedules are subject to change.

www.woodsman-arb.co.uk

[REDACTED]

