

DRAFT REPORT TO PLANNING BOARD

Author:

Ext:

Date:.....

APPROVED
(Team Leader)

Date:

APPROVED
(Management)

Date:

RIGHT TO SPEAK (form complete)	
Plan to go	

ITEM NO:

NO. OF APPENDICES:

**Continuation of Tree Preservation Order No 7 1990 Hooton Cliff Wood
– Doncaster Road, Hooton Roberts, Rotherham, S65 4PF**

RECOMMENDATION:

That Members confirm the continuation of the existing Tree Preservation Order No. 7 (1990) situated at Hooton Cliff, south of Doncaster Road, Rotherham, S60 4PF under Section 198 of the Town and Country Planning Act 1990.

Background

A Tree Preservation Order (Order) was made in regard to this land in September 1990 (TPO No. 7 1990).

The Order was recommended to be imposed by Members without modification on 18 October 1990. The Order was confirmed and sent to various interested parties on 14 May 1991.

The Order was not challenged at the time, but in correspondence, the landowner, Mr Richard Winstanley has recently stated that he feels the Order is invalid and that the validity and continuation of the Order should be reviewed. The Order has therefore been assessed by the Council's Tree Service Manager who has considered that the Woodland continues to provide valuable and important amenity and associated benefits being clearly visible to the public from the nearby highway as well as the designated public right of way.

It is recommended that Members retain the Order without modification as confirmed in 1991.

Objections

The main reasons stated by Mr Richard Winstanley as to why the Order is invalid and should not continue are:

1. That Mr Richard Winstanley was not served with a copy of the Order when it was made in 1990,

2. that the land subject to the Order is not ancient woodland, therefore making the Order invalid, and
3. that when Mr Richard Winstanley acquired the land, he also acquired timber rights and thus an Order cannot overrule this – the key words being '*and together also with the standing timber thereon*' See Appendix 1, extract Conveyance dated 30 November 1981.

These issues are addressed in the paragraphs below.

1. Serving of the Order

The Council's file for Tree Preservation Order No 7 1990 contains a memorandum from the Tree Officer dated 24 September 1990 suggesting a Tree Preservation Order be made on the northern section of the Hooton Cliff Wood (Appendix 2). The minutes of the Planning Board Meeting of 18 October 1990 recommended a Tree Preservation Order be imposed (Appendix 3). The Order, dated 5 December 1990 (Appendix 4) was then served by hand via a Rotherham Council Solicitor (certified at 1815 hours on 29th January 1991) on Mr Richard Winstanley together with a covering letter dated 2 January 1991 (Appendices 5, 6). This letter also makes reference to a recent telephone conversation with Mr Richard Winstanley and is specifically addressed to him. It is of note that no further correspondence or challenge was subsequently received by the Council or through Court proceedings and accordingly, a final confirmed Order was then sent to various interested parties via recorded delivery, including Mr Richard Winstanley, dated 14 May 1991 (Appendix 7).

Accordingly, it is considered that the Order was served in accordance with the relevant regulations of the time and the Council does not consider the first aspect of the request to have any significant planning weight.

2. The land subject to the Order is not ancient woodland

The Order only covers the northern section of the Hooton Cliff wood and was made due to the evidence available at the time that the woodland was identified as being important of its type. In addition it was reported as 'occupying a prominent position and forming a very significant landscape feature contributing to wider amenity'. The Order was not made due to the land being ancient woodland.

The northern part of the site is in private ownership (Mr Winstanley is the owner). The other part of the land is subject to a Forestry Commission dedication covenant (figure 1) – which covers the rest of the site.

The trees subject to the Order continue to provide valuable and important amenity and associated benefits being clearly visible to the public from the nearby highway (Doncaster Road, A630) as well as the designated public right of way, Hooton Roberts footpath No 3, that passes through the woodland and from a distance in the surrounding landscape. The removal of the Order could result in a significant loss of the trees within the area which would have a significant adverse impact on local amenity. The trees include species of mixed hardwoods consisting of Sycamore, Ash, Beech, Elm and Hawthorn. They vary in age, form and condition as would be expected within a woodland.

In relation to the land being Ancient Woodland, although this is not relevant to the imposition or continuation of the Order, the Natural England Ancient Woodland Casework Officer notes that Hooton Cliff was included in the original South Yorkshire Ancient

Woodland Inventory (AWI) published in 1986. The original survey was largely a desk based exercise collating map evidence and utilising existing biological records from sources such as the South Yorkshire County Council.

The land is not within a Site of Special Scientific Interest which is where Natural England normally concentrates its efforts. However because they are responsible for the maintenance and revision of the ancient woodland inventory, they have been asked for their opinion on the historical status of these woods. The general definition adopted for 'ancient Woodland' in England is a 'site that has been continuously wooded since the 1600's'.

In summary, map evidence and historical documentation from the 1770's presented to Natural England indicates that a historical limestone quarry and kilns existed on the Hooton Cliff site at the location N & E of Doncaster Road entrance from at least the 1770's until 1841. In addition recently published maps include the addition of buildings constructed in the woodlands during the 1950's. Due to this industrial activity this section of the Hooton Cliff site is unlikely to have been under continuous woodland cover since the 1600's.

However, the evidence suggests that the majority of Hooton Cliff is ancient woodland with the exception of the region to the N & E of Doncaster Road entrance where the historical limestone quarry, kilns and military buildings were located. Natural England will amend the ancient woodland inventory map data to reflect this new evidence and omit the region of Hooton Cliff northeast of Doncaster Road entrance (boundary shaded in green to boundary shaded in red within figure 1).

Overall therefore, whilst not all of the woodland lies within the ancient woodland designation, the northern section of the site is the most publically visible area of the wider site and its inclusion within the Order continues to safeguard its future and avoid further loss of woodland cover in the borough. The fact that the north-eastern part of the woodland is no longer classed as ancient woodland does not affect the view that the woodland meets all the criteria for inclusion in a Tree Preservation Order due to the valuable and important amenity it provides to the area.

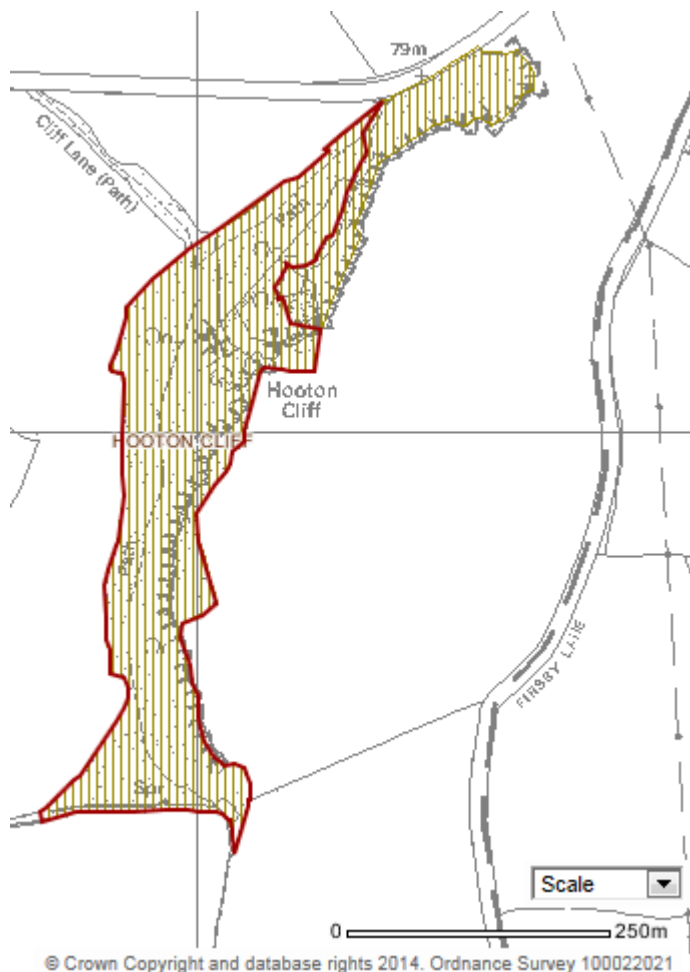


Figure 1 Forestry Commission's Dedication Covenant enclosed within the red line

3. The Order and any previously acquired timber rights

The southern section of the overall land remains protected under separate legislation. The Forestry Commission confirmed in 1991 that the remaining area of the woodland is within the ownership of Wentworth Woodhouse Estate and is subject to a Forestry Dedication Covenant which exempts it from the Tree Preservation Order Regulations.

A Felling licence can be obtained from the Forestry Commission. This would normally include conditions that the felled area must be restocked and the trees maintained for a period not exceeding ten years.

Felling licences are required when more than five cubic metres of timber are felled in any calendar quarter, or more than two cubic metres are sold. Felling licences are administered by the Forestry Commission and overrule Tree Preservation Order and Conservation Area restrictions. However, the Local Planning Authority is consulted before any licence is granted.

Whilst no documentation has been submitted by Mr Richard Winstanley showing any part of the site being subject to a valid felling licence, written confirmation has been received from the Forestry Commission (dated 11 July 2016) to confirm that there is no felling licence in place on any of the Hooton Cliff Wood. Any felling order that might have been historically associated with the land is therefore no longer considered valid.

Therefore, the fact that Mr. Winstanley previously acquired the timber rights to this piece of land, does not mean that the Order is invalid, was improperly imposed or should be revoked. Mr Winstanley could apply to the Forestry Commission for a Felling Licence, which would be operative despite the Order being in force. According to the Forestry Commission no such application has been made.

Conclusions

Collectively, the trees are a significant landscape feature and provide valuable and important amenity and associated benefits being clearly visible to the public from the nearby highway (Doncaster Road, A630) as well as the designated public right of way (Hooton Roberts footpath No 3). The woodland continues to provide valuable and important amenity with associated benefits and remains worthy of protection, particularly if its future prospects appear to be at risk.


As stated above, whether the land was Ancient Woodland or not, was not relevant to the imposition of the Order.

It is considered that the Order was served correctly in 1991 in accordance with the relevant regulations at the time. The request to review the Order has been carefully considered and it is recommended the Order should be retained as originally approved in 1991.

Applications can be made to the Local Planning Authority to carry out any work to the trees in the future including any pruning, felling or excavations that may disturb any tree roots or seedlings. In addition a new felling license will also be required from the Forestry Commission if it is intended to fell more than 5m³ in any calendar quarter.

Appendix 1 extract Conveyance dated 30 November 1981

INLAND REVENUE
Stamp
- 6 JAN 1982
FINANCE ACT 1931
H

 **This** CONVEYANCE is made the 30th day of November One thousand Nine Hundred and Eighty One BETWEEN THE SECRETARY OF STATE FOR THE ENVIRONMENT (hereinafter called "the Vendor") of the one part and RICHARD DAVID WINSTANLEY of Quarry Bungalow 58 Sandygate Lane Wath Upon Dearne Rotherham in the County of South Yorkshire (hereinafter called "the Purchaser") of the other part

W H E R E A S

The Vendor is the estate owner in respect of the fee simple absolute in possession of the property hereby conveyed subject as hereinafter mentioned but otherwise free from incumbrances and has in exercise of his statutory and other powers agreed with the Purchaser for the sale to him of the said property except and subject as hereinafter mentioned for the sum of Eighteen Thousand Five Hundred and Fifty Pounds

NOW in pursuance of the said agreement and in consideration of the sum of Eighteen Thousand Five Hundred and Fifty Pounds paid by the Purchaser to the Vendor (the receipt whereof the Vendor hereby acknowledges) T H I S C O N V E Y A N C E W I T N E S S E T H as follows :-

1. THE Vendor as trustee in exercise of all powers him hereunto enabling hereby conveys unto the Purchaser ALL THAT irregular shaped plot of land situate partly adjoining the Doncaster Road at Hooton Roberts near Rotherham in the said County of South Yorkshire which said plot of land contains by admeasurements 7.26 acres or thereabouts and is more particularly delineated on the plan annexed hereto and thereon edged red TOGETHER WITH a concrete bunker erected thereon or on some part thereof and TOGETHER ALSO WITH the standing timber thereon TO HOLD unto the Purchaser in fee simple SUBJECT TO the exceptions and reservations stipulations and restrictions contained mentioned or referred to in a Conveyance (hereinafter called "the

reported to Committee
12-10-90
pce

ended landscaping scheme for the hotel site be approved and be in accordance with the requirements of the Section 52

File No. 10.3p12
Proposed Tree Preservation Order
Hooton Cliff Wood, Hooton Roberts, Rotherham

3300/1

Inventory Survey of Ancient Woodlands in the Rotherham Borough has identified the above woodland as being important of its type. In addition, it occupies a prominent position and forms a very significant landscape feature contributing to the wider amenity. To help safeguard its future it is recommended that the area marked W1 on the attached plan and schedule, appendix 1 and 2 is included in a Tree Preservation Order under Section 198 of the Town and Country Planning Act, 1990.

The Forestry Commission have confirmed that the remaining area is in the ownership of Wentworth Woodhouse Estate and is subject to a Forestry Dedication covenant exempting it from the Tree Preservation Order Regulations.

Recommendations

That a Tree Preservation Order be imposed.

Item No. 12

File No. R90/959B
Change of use to manufacture and storage of industrial process filters and access improvement at premises at junction of Rotherham Road and Orgreave Lane, Unit 3C, Nunnery Drive, Parkway Industrial Estate, Sheffield for Schumacher Filters Ltd.

Appendix 4 – signed copy of Order

from the expiration of the period referred to in paragraph (a) above) at the expiration of which if no such notice is given to the Secretary of State such Order may take effect by virtue of this section and without being confirmed by the Secretary of State

(3) The authority shall also serve notices to the same effect on the persons mentioned in subsection (1) above

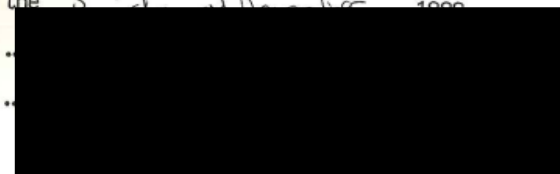
(6) The authority shall send a copy of any advertisement published under subsection (2) above to the Secretary of State not more than three days after the publication

(7) If within the period referred to in subsection (2)(a) above no person claiming to be affected by such Order has given notice to the Secretary of State as aforesaid and the Secretary of State has not directed that such Order be submitted to him for confirmation such Order shall at the expiration of the period referred to in subsection (2)(b) of this section take effect by virtue of this section and without being confirmed by the Secretary of State as required by sections 97 and 98 of the Act

(8) This section does not apply to such Order revoking or modifying a consent granted or deemed to have been granted by the Secretary of State under Part III or Part VII of the Act

GIVEN under the Common Seal of the
Rotherham Borough Council

the 5th day of December 1999



Director of Legal and
Administrative Services



Appendix 5 – serving certificate

HAWD

CERTIFICATE OF SERVICE BY POST
(M.C. Rules 1981 rr. 67,99(6))

I DAVID. ARMSTRONG, SOLICITOR of Civic Building, Walker Place,
Rotherham, hereby certify that I served RICHARD WINSTANLEY with
the LETTER DATED 24 JANUARY 1991 of which this is a true copy, by ^{delivering} sending
the said letter by hand by the ~~recorded~~ delivery service to him/her/the
company in a prepaid letter posted by me at the Post Office situate at Frederick
Street, Rotherham at ... 6.15 ... o'clock in the ... a.m. ... noon on the
day of 29 JANUARY 1991 and addressed to ...
at MARSH FARM, MOSS, DONCASTER, SOUTH YORKSHIRE being his/her last
known (usual) place of abode (the registered office of the aforementioned
company).

Date the ... 31.5.91 ...
Signed [Redacted] T. Armstrong ... 1991

JT/LDR

3594

2nd January, 1991

RECORDED DELIVERY

Mr. Richard Winstanley,
Manor Farm,
Moss,
DONCASTER.

Dear Sir,

Town and Country Planning Act 1990 - Section 200
Borough of Rotherham, Tree Preservation Order No. 7, 1990

The above order was made on the 5th December, 1990. I enclose a copy for your information. I also enclose a Notice of the Order which contains the grounds for the making of the order. It also outlines the time period for objections to be made against the order.

Following our recent telephone conversation on this matter I have made contact with the Forestry Commission who have confirmed that the land in question ~~is~~ is not the subject of a Forestry Commission dedication covenant and that, therefore, the enclosed order is in fact valid. I enclose a copy of a letter from the Forestry Commission for your information.

Yours faithfully,



for the Director of Legal and Administrative Services.

JRT/HDW/MO
10.72.90

3594

14th May, 1991.

RECORDED DELIVERY

Mr. R. Winstanley,
Manor Farm,
Moss,
DONCASTER.

Dear Sir,

Town and Country Planning Act, 1990, Section 200
Borough of Rotherham Tree Preservation Order No. 7 1990

Further to my letter of the 21st January, 1991, I write to inform you that the Planning and Development Committee of the Rotherham Borough Council approved the above Order without modification on the 9th May, 1991. No objections having been received from yourself or any other person.

Yours faithfully,



for the Director of Legal and Administrative Services.