

From: Frater, Brian
Sent: 08 July 2019 09:08
To: Aikman, Ian; Wilkinson, Simon; McKinlay, Nuala
Subject: FW: Objection - The Scottish Borders Council Tree Preservation Order No. 57

From: F E Mackie [mailto:fem13@talktalk.net]
Sent: 07 July 2019 20:21
To: Frater, Brian <BFrater@scotborders.gov.uk>
Subject: FW: Objection - The Scottish Borders Council Tree Preservation Order No. 57

From: F E Mackie [mailto:fem13@talktalk.net]
Sent: 07 July 2019 20:20
To: Tracey.logan@scotborders.gov.uk
Cc: 'dparker@scotborders.gov.uk'; Ramage, Clair (Councillor) <Clair.Ramage@scotborders.gov.uk> (Clair.Ramage@scotborders.gov.uk); Hayward, Julie (JHayward2@scotborders.gov.uk); 'Julie'; 'JHayward1@scotborders.gov.uk'; 'BFrater@scotborders.gov.uk'; 'mtdouglas@scotborders.gov.uk'; 'sherkes@scotborders.gov.uk'; 'IAikman2@scotborders.gov.uk'; 'hawickfloodps@scotborders.gov.uk'; 'AGueldner@scotborders.gcsx.gov.uk'; 'Shona.Haslam@scotborders.gov.uk'; 'Marshall, Stuart (Councillor)'
Subject: Objection - The Scottish Borders Council Tree Preservation Order No. 57

Chief Executive
Scottish Borders Council
Council Headquarters
Newtown St Boswells

4th July, 2019

Dear Madam

Town and Country Planning Act
Objection - The Scottish Borders Council Tree Preservation Order No. 57

I write in relation to the above and to make a formal objection to The Scottish Borders Council Tree Preservation Order No. 57 on the following grounds.

- i. The 'arboricultural' information upon which it was based was improperly obtained.
- ii. The scope of the protection offered by it is inadequate and does not reflect the risk of felling to which all trees in the Princes Street/Commercial Road "green corridor", outwith the grounds of

Haig House, are subject.

iii. TPO No. 57 does not afford protection to horse chestnuts of significant historical and natural value in the grounds of, and on land directly adjacent to, Haig House.

i. Arboricultural information obtained improperly

If you have been following the email chain between myself and the Head of Legal Services regarding the circumstances leading up to the imposition of TPO No. 57, you will be aware that it has recently come to my attention, following my receipt of said TPO No. 57, that TPO No. 32 which was made in 2006 and meant to protect 139 trees in the 'green corridor' of Princes Street/Commercial Road (from the new Lidl building in the west, to the A7 in the east) lapsed after six months because it was not confirmed or registered by Legal Services.

You will also be aware that I remain deeply concerned about how the 'arboricultural' information that informed this new TPO No. 57 was gathered. On 2 November 2017, I received a 'section 176 notice' from Simon Wilkinson, Tree Officer, claiming that SBC was undertaking a "Borders-wide tree review", and that therefore I was required to allow an 'arboricultural consultant', Mr Ken Harvey, to enter my grounds in order to survey my trees. In May 2019, after two further visits by Ken Harvey, I spoke to my neighbours on at 27, 25, 21 and 19 Princes Street who have trees that were 'covered' by TPO No. 32 to enquire as to whether they had been contacted by the Council and/or had their trees surveyed. I have asked the same questions of them again before writing this response. None of my neighbours have been contacted by the Council with regards to a "Borders-wide tree review", been visited by a tree consultant, or indeed been notified about TPO No. 57. This is especially concerning in relation to the owner of 21 Princes Street, as TPO No. 57 purports to include trees on her property, and yet she has not received her statutory notification. All of this is I find extremely peculiar - why was this tree survey focussed solely on my garden, when the previous (albeit lapsed but widely upheld and believed in) TPO No. 32 covered trees sited along the length of Princes Street/Commercial Road?

What has compounded the curious and conspiratorial character of this "Borders-wide tree review", is information I have received under FOIAG261-EIR12999. Simon Wilkinson stated on 2 November 2017, in his "notice" letter to me that a "Borders-wide tree review" was underway, and that he required access

to my garden. Simon Wilkinson stated in an email to Gavin Stevenson (info@glsltd.uk), the developer behind planning application 19/00509/FUL, dated 13 March 2019 that SBC "are currently undergoing (sic) a complete TPO review, [and] having completed the Berwickshire and Tweeddale (sic) area are now about to start in the Hawick area. The Horse Chestnut along with all the other trees on Commercial Road/Princes Street are part of that review". For your reference, if you have not been following the emails into which I have been copying you, the horse chestnut referred to explicitly is tree No. 84, a tree which, up until recently everyone, with perhaps the exception of a few of your more senior officers, thought was protected by TPO No. 32, because everyone, with the exception of those officers, thought TPO No. 32 was extant.

This contradiction between what Simon Wilkinson wrote to me in 2017, and what he wrote to Gavin Stevenson in 2019, suggests that he has misrepresented the situation to one or other of us. Why? It is my contention that he, perhaps along with officers in Legal Services, became aware in 2017 that TPO No. 32 had never been confirmed or registered. (Perhaps this discovery came about as a result of the complaint I raised with the SPSO which relied heavily on the existence of TPO No. 32. During the time that complaint was going forward, SBC at no time indicated to the SPSO that TPO No. 32 had in fact lapsed) Was it then that Simon Wilkinson realised that trees the Council had meant to protect 13 years ago, were actually unprotected? It is my contention therefore that Simon Wilkinson sought access to my grounds on false pretences by claiming that a Borders-wide tree review was underway (perhaps it was, but as his email of 13 March 2019 makes clear, it was not underway in this area, and it is also clear to me, after speaking to neighbours, that it is still not underway in this area) so that Scottish Borders Council could ensure that a valid and convenient TPO existed before Gavin Stevenson applied for planning permission to develop 30-32 Commercial Road.

ii. Inadequate protection

My second objection is that TPO No. 57 only protects 28 out of the 139 trees that were all equally deemed worthy of protection under the now-lapsed TPO No. 32. Magisterial chestnut and beautiful cherry trees stand on east Princes Street in an area known locally as "The Gravies", and more properly as the graveyard of the Auld Kirk. The composer of the town's Common Riding anthem Teribus lies

buried in this former graveyard. As even the myth of the long-expired TPO No. 32 fades, what protects them from being cut down? At a meeting held in Hawick Town Hall in April this year to discuss the Hawick Flood Protection Scheme, one person suggested that they could indeed be cut down in order to provide parking while the Flood Protection Scheme was in operation and cars were diverted from Commercial Road onto Princes Street.

With regards to trees within my own grounds, TPO No.57, amongst other notable trees, ignores a mature poplar that stands at over 28 metres tall, which can be seen and is regularly favourably remarked upon by our Princes Street neighbours as they can view it over the wall, and a weeping ash which, despite Simon Wilkinson's recommendation that it should be cut down in the autumn of 2006, two months or so after TPO No. 32 had in fact lapsed, has remained healthily in situ until the present day.

The new TPO No. 57 strangely only covers the trees in my grounds - is there I wonder, as I await for yet another set of FOI requests, now any actual protection, or protection intended, for the other trees in the 'green corridor'? Or are they now at the mercy of those who would cut them down, unsanctioned, as they have so often done in the past? As the Council is aware, a TPO, or at least the threat of one existing, is sometimes all that stands between an area of woodland being felled and not.

As you may well be aware, trees were felled during the development of the Aldi site, and the only reason that more were not was because my family intervened in good faith, believing TPO No.32 to be extant, and warned the attempted fellers that the trees were protected by a TPO (which obviously they were not because it had long since lapsed). The horse chestnut, marked as tree No. 84 on the Plan annexed to TPO No. 32, equally still stands because I informed the contractor that it was protected by TPO No. 32, in good faith. (It also still stands because the permission for its removal, given by Mark Douglas, was based on entirely incorrect information).

If Scottish Borders wish to retain the green corridor along Princes Street and Commercial Road, they need to ensure that TPO No. 57 is varied to cover all the trees that were supposed to be protected by TPO No. 32. Scottish Borders Council would be unwise to continue to put assume that trees along this

corridor are sufficiently protected simply by virtue of being privately or Council-owned. This has never deterred developers or their contractors previously. Only the large fines associated with damaging or destroying a tree subject to a TPO has the power to deter.

iii. No protection for horse chestnuts at Haig House/30-32 Commercial Road Adjacent to the fence that delineates my property from Commercial Road is a horse chestnut tree, given on the plan annexed to the now expired TPO No. 32 as tree No. 80. At 30-32 Commercial Road, just over the fence, stands horse chestnut tree No. 84. In between the trees, is a gate which allows access from my grounds onto 30-32 Commercial Road. The path which passes through this gate must have constituted the mill owner, Walter Laing's, route of access to Wilton Mills when the house and mill were first constructed. Although I respect that the fence and gate are unlikely to be original, it stands that the path from the house leads through the gate and fence at this point allowing us a right of servitude across the abovenamed property and onto Commercial Road. The two chestnut trees form a beautiful natural frame to this aperture. My neighbour, the late Provost Zandra Elliott, and I often met and chatted at this gate and remarked on the natural beauty of the two trees. I was led to believe at the imposition of, the now lapsed, TPO No. 32, that both of these trees were protected. I was puzzled when I recently received the new TPO No. 57 and dismayed to see that TPO protection had been conveniently removed from both trees under this instrument.

Yet, because, at the time, I still believed this legal instrument to be extant (that is, TPO No.32), I recently put my daughter's and my own life at risk in trying to protect tree no. 84 from being felled. This matter is now in the hands of the police. Further, in order to protect tree no. 84, I have made a verbal offer to Gavin Stevenson to purchase it from the owner, Bayhill Farming Limited, but this was refused.

I would like to note here that the only reason an attempt to fell tree no. 84 on this occasion was made was because Mark Douglas gave a permission which proved to be invalid due to the fact that he had in turn based his decision on an out-of-date plan for the temporary road due to be laid by the Flood Protection Scheme. This road, when built, will now take an entirely different route as indicated on the new blueprint shown to me by Rachael Warrington of the HFPS project team on a visit to my premises.

As planning permission in respect of 19/00509/FUL has not yet been granted, and as the two trees offer such a beautiful natural amenity to an otherwise bleak and featureless area, I feel most strongly that tree no. 84 deserves to be protected and allowed to remain in situation. Correspondence between Gavin Stevenson and Council officers, which was released to me under EIR 12999, suggest that tree no. 80 and no. 84 are diseased and/or dangerous. I have owned Haig House, peaceably and quietly, for twenty-five years this past midsummer's day and, in that time, only one branch of any significance has fallen from tree no. 84. The recent cutting of the tree has revealed a small canker, visible from my side, something any other tree might have and stand for decades to come. When a tree becomes a barrier to 'progress' in the eyes of a developer, how often is it declared dangerous or diseased after a report is compiled by an 'arboriculturalist' - a largely unregulated 'profession' and an often self-styled title, or one rather easily obtained, in the case of the Mr Ben Anderton who carried out the review, from a university ranking 16 out of 17 in the country for its agricultural and arboricultural courses.

Besides, with regard to the type of disease the tree is purported to have, the Forestry Commission states in their online advice page Bleeding Canker of Horse Chestnut, that:

"Some trees may survive for many years as disease progression can be very slow or even show signs of recovery (vigorous callus development at the margins of cankers when bark has been killed by the disease)."

Did the 'arboriculturalist' employed by Gavin Stevenson examine the tree for such signs of recovery? There are no signs, in his very brief report, that he did. Further the Forestry Commission state:

"Removing affected trees unless they pose a safety hazard is unnecessary. It will not prevent disease spread on a site where some trees already show symptoms. Also, significant numbers of trees do recover."

It is ominous that in the most recent plan submitted to the public portal by Aitken and Turnbull on behalf of Image Estates Limited, the plan shows no Tree Root Protection Areas for any of the significant number of trees along my fence line presently protected by TPO No. 57. It also shows no tree No. 80 or No. 84 at all. Instead there is a storage box situated across the gate which provides my right of servitude

and where the trees now stand.

Hawick's history and architecture, be it natural or built, is being eroded by a mind-set that thinks no further than its own convenience. Trees No. 80 and No. 84 are worth protecting and preserving in that they celebrate a mind-set that planned for the future - whether they would live to enjoy the fruits of their labour or not - and that thought and cared about how those in the future would benefit from their forethought in planting beautiful trees. It would be unthinkable that the historical horse chestnut tree No. 84 should be destroyed for the sake of a storage box.

TPO No. 57 has not been extended to horse chestnut No. 80, on my side of the fence, and thus it is at risk from the developers. Its tree root protection area is adjacent and probably interwoven with that of No. 84. Why have only horse chestnuts been conveniently excluded from TPO No. 57?

In 2006, the Council deemed 139 trees on Princes Street/Commercial Road to be worthy of the greatest protection. Since 2006, none of those trees have been legally protected. The introduction of TPO No. 57 means that only 20% of those trees formally identified under TPO No. 32 are now protected. I request that the Council provide all 139 trees with the same protection that they had under the lapsed TPO No. 32 as they are part of one large group - the green corridor along Princes Street/Commercial Road, Hawick. Otherwise the Council will start to see that corridor, which it considers in its development plan for Hawick to be of significant visual amenity, disappear.

Mark Douglas, in the emails submitted to the SBC planning portal in relation to the planning application 19/00509/FUL, states that "there are a...number of trees which lie behind this in the grounds of Haig House and (sic) provide a wooded backdrop to the lower land in Commercial Road". Some of my trees have already been killed by contractors working on the Aldi site (why Simon Wilkinson gave them permission to cut back trees on a completely different site to the one they were supposed to be working on continues to both mystify and gravely concern me) and have died back as a result, thus providing a much reduced amenity value.

In conclusion, whilst I welcome the protective aspects of TPO No. 57 in respect of the possibility of damage to trees and tree root areas from the proposed development of the Bayhill site, I object to TPO No. 57 for the above reasons, chiefly due to the fact that it is not as extensive as the lapsed TPO No.32.

Therefore, in order to ensure the original 139 trees are protected as before, I request the following:

i. That TPO No.57 be varied immediately in order that all trees, privately or publicly owned, and formerly protected by the long-lapsed TPO No.32, are protected until new surveys are conducted and new, appropriate and independent TPOs instituted for their protection.

ii. That said variance extend specifically to chestnut trees Nos. 80 (Princes Street) and 84 (Commercial Road) and that they henceforward be recognised by Scottish Borders Council as items of special natural and historical significance and value to the town and preserved accordingly.

You may also be aware that I am in the process of compiling a second complaint which is likely, given the current attitude to my concerns being adopted by certain SBC officers, to require to be escalated to the SPSO, and which will include some of the matters outlined above. The SPSO will look to both Scottish Borders Council and myself to have taken steps towards the resolution in full or in part of all matters pertaining to the complaint. The granting of the variance to TPO No.57, and the recognition of the special status of trees No. 80 and No. 84. (lapsed TPO No.32 attached schedule), by Scottish Borders Council may go some way towards evidencing such steps on the part of the Council.

Yours sincerely

F E Mackie