

Item: 3

Development and Infrastructure Committee: 19 April 2023.

Tree Preservation Order at Grainbank, Kirkwall.

Report by Corporate Director for Neighbourhood Services and Infrastructure.

1. Purpose of Report

To consider the confirmation of a Tree Preservation Order at Grainbank, Kirkwall.

2. Recommendations

The Committee is invited to note:

2.1.

That a Tree Preservation Order was made under delegated authority and took effect on 8 November 2022, covering an area of woodland at Grainbank, Kirkwall, as detailed in the map attached as Appendix 1 to this report.

2.2.

That a Tree Preservation Order takes effect on such date as may be specified in the order but expires six months after it is made unless it has, within that period, been confirmed by the Planning Authority.

2.3.

That, once the initial Tree Preservation Order is made and published, a period of 28 days is allowed for the making of objections and representations to the Planning Authority.

2.4.

That, following public notice of the Tree Preservation Order in The Orcadian, which provided for representations to be made no later than 16 December 2022, five representations were received, attached as Appendix 2 to this report.

2.5.

The matters raised by the representations received and officers' response to the representations, as detailed in section 5 of this report.

It is recommended:

2.6.

That the Orkney Islands Council Tree Preservation Order (Grainbank, Kirkwall) No.1 2022, attached as Appendix 1 to this report, be confirmed, in the interests of amenity, as the woodland contributes to the character and attractiveness of the area.

3. Background

3.1.

Section 160 of the Town and Country Planning (Scotland) Act 1997, as amended, empowers planning authorities to make an order providing for the preservation of any trees, group of trees, or woodlands, where it is considered expedient in the interests of amenity and/or where the trees, groups of trees or woodlands are of cultural or historical significance.

3.2.

On 3 November 2022, officers were made aware of tree felling works being carried out at Grainbank, Kirkwall. Officers visited the site and discussed the matter with the tree contractor. This established that tree works were ongoing which had potential to harm amenity. That included the felling of multiple mature trees, and clearance works of the natural regeneration. It was following this meeting that the Tree Preservation Order was made.

3.3.

The woodland was assessed as meriting protection by Tree Preservation Order including consideration of condition, its location adjacent to a busy road with views of and into the woodland, and the ongoing tree works. The Tree Preservation Order allows the Council to prevent tree work which would harm amenity and attach appropriate conditions to any consent for tree work.

3.4.

A Tree Preservation Order was made under delegated authority and took effect on 8 November 2022 covering an area of woodland at Grainbank, Kirkwall, as detailed in the map attached as Appendix 1 to this report. The Tree Preservation Order expires six months after it is made, ie on 7 May 2023, unless it has, within that period, been confirmed by the planning authority.

3.5.

The trees are in a parcel of land associated with Grainbank, Kirkwall. Following a period when the property was unoccupied, planning permission, reference 11/777/PP, to reinstate the house and carry out other development was granted in March 2012. That planning permission includes no works to the trees and a 'new woodland walk' within the grounds to the east of the steading. The planning permission was implemented, but no significant works were progressed. The property ownership changed in October 2022 and further works have been carried out. Fresh applications for planning permission and listed building consent were submitted in 2022 for works to the house and attached steading, which remain under

consideration. Current works must therefore be limited to those already approved. Some of the trees subject to the Tree Preservation Order are included within the application site area, and others are in the parcel of ground to the east of the buildings.

3.6.

The property is not in a conservation area, the listed status of the building does not provide any protection to the trees, and until the Tree Preservation Order was made, the trees had no formal protection. No further works have been carried out since the Tree Preservation Order was made. Therefore, there is no suggestion that any offence has been committed.

4. Planning Policy and Guidance

4.1.

Policy 9F: Trees and Woodlands of the Orkney Local Development Plan 2017 provides the Council's policy for trees and woodlands:

- Development that would result in the loss of, or damage to, one or more trees protected by a Tree Preservation Order; or lead to the loss of, or damage to, individual trees or woodlands of significant ecological, landscape, shelter or recreational value will not be permitted unless:
 - It would achieve significant and clearly defined benefits that outweigh any potential loss;
 - Any evaluation, to the appropriate British Standard (or a suitable standard to be agreed with the Planning Authority) of the ecological, landscape, shelter and recreational value has been undertaken and it is concluded that the loss would be acceptable; and
 - An additional or equivalent number of new trees are planted on, or near the site to an agreed standard and specification (species and maturity).

4.2.

On 2 November 2011, the Planning and Protective Services Committee recommended that a Development Brief, setting out planning and design guidance for the development of land at Grainbank Farm at the western edge of Kirkwall, be approved as supplementary planning guidance. The purpose of the Development Brief was to provide guidance for developers in terms of opportunities and constraints and provide a framework on how the site should be developed, noting that the house and ancillary buildings are category B listed buildings and were built around 1829.

4.3.

The Development Brief indicates that the preservation and integration of Grainbank is a key component in the development strategy including:

- The house and adjacent farm buildings will be fully repaired and restored.

- A woodland management system will be implemented for the adjacent wood.

4.4.

The Development Brief also requires the existing woodland around Grainbank to be extended to form the background setting and edge to the development of the wider area.

4.5.

The 'woodland' description in the adopted development brief was reflected in the assessment of the trees, including the range of tree species present, and the range in sizes of trees, including significant natural regeneration typical of a woodland.

5. Confirmation of Tree Preservation Order

5.1.

The Tree Preservation Order was made and took effect on 8 November 2022 and will expire six months after it is made unless it has, within that period, been confirmed by the planning authority.

5.2.

Public notice of the Tree Preservation Order was given in The Orcadian, and a period of 28 days was provided for representations to be made to the Planning Authority. Before deciding whether to confirm the Tree Preservation Order, the Council must take into consideration any objections or other representations duly made.

5.3.

The 28-day period for receipt of representations expired on 16 December 2022, and five representations have been received, attached as Appendix 2 to this report. Three are from interested parties (the property owner; the tree work contractor and a firm commissioned by the property owner to carry out a tree survey). The representations are a mix of objection, comment and support, as follows:

- Objections:
 - Mr Albert and Mrs Aileen Bruce, Grainbank, Kirkwall, KW15 1RD.
 - Ewan MacKenzie, Ewan MacKenzie Garden Services, The Garages, Cromwell Road, Kirkwall, KW15 1LH.
 - Nic Paterson, by email.
- Comment:
 - Matt Harmsworth, Lead Consultant, Woodland Solutions (Northern) Ltd t/a ROAVR Group, Marr House, Beechwood Business Park, Inverness, IV2 3BW.
- Support:
 - Eleanor Fraser, 24 Grainepark, Kirkwall, KW15 1UL.

5.4.

In summary, the representations raise the following points of objection:

- The Tree Preservation Order is unnecessary.
- The trees do not comprise a woodland, with clear boundaries and lawn.
- The work was carried out in accordance with a tree survey.
- The works were to remove all the weaker trees, trees closer to the house and to preserve larger trees.
- Retaining the trees could affect light in the house and risk trees failing in high winds and impacting the house.
- The retained trees are now sustainable, of good form and will provide conservation and landscape value for decades to come. They should be well protected through the development phase.
- The works will allow the woodland to flourish.
- The trees are in a private site.
- The Council has not carried out a survey of the trees or reviewed the tree survey.
- A Tree Preservation Order was not made when previous planning permission was approved.

5.5.

In response to the points of objection, the following comments are made:

- “The Tree Preservation Order is unnecessary.” The Tree Preservation Order woodland is regarded by the Council as offering amenity value to the highly trafficked public road adjacent. A Tree Preservation Order is not normally necessary, and in most cases the Planning Authority will reach agreement with a property owner or developer regarding trees to be retained, pruned or felled. This pragmatic approach allows development to proceed, while safeguarding the amenity, cultural value, biodiversity, or other benefits of existing trees or woodlands. As raised in the objection from the property owner, pre-application advice was provided regarding felling works. However, the advice was not a ‘categorical refusal’ for trees to be felled as stated, and the Planning Authority anticipated the approach followed in most development site cases, for agreement to be reached without the requirement for formal process. The commencement of tree felling and other works without having reached such agreement, and therefore imminent threat to the woodland, formed part of the assessment by the Planning Authority that a Tree Preservation Order was merited.
- “The trees do not comprise a woodland and are a town garden with four clear boundaries and large lawn areas.” As described previously in adopted Council documents, the trees form a woodland largely in a parcel of ground to the rear of the house and steading; it was common at the time of construction of the house for a small woodland to be planted adjacent. Current works to the property rely on the March 2012 approval of planning permission (as the current application remains under consideration), which indicates the trees retained and the approved site plan references a ‘woodland walk’. Some sides of the woodland are enclosed

by a stone boundary wall – to the public road to the north, and the walled garden to the south – but the woodland is separated by a relatively modern post and wire fence to the former agricultural land to the east. A post and wire fence between woodland and a field does not necessarily lead to a definition of garden ground. There are no large lawn areas evident, perhaps due to the confirmation in the objection from ROAVR Group that ‘no works have been carried out to the grounds/gardens’ since 1998. The submission of ‘town garden’ and ‘large lawn areas’ is also counter to the ROAVR Group description of the site (in the context of potential damage to structures) as significant trees with “dense self-set natural regeneration springing up along wall lines and through the footprint”.

- “The work was carried out in accordance with a tree survey.” A tree survey to a suitable standard is the basis of an application for tree works, either a specific application for tree works to protected trees, or a tree survey and tree protection plan as part of a larger submission if trees are in a development site and the development includes protection, works and/or removal of trees. The protection of trees does not prevent the carrying out of appropriate tree works, simply that an application is required. There is no fee for a tree works application. Had the Tree Preservation Order been made before any works were carried out, and an application submitted accompanied by a tree survey to a suitable standard, identifying tree felling and/or pruning works that were considered necessary, the results of the survey are a key consideration in the determination of the application. As noted above, pre-application advice was provided regarding felling works; no further advice was sought, and a tree survey was not provided for further discussion or pre-application advice before the felling works commenced.
- “The works were to remove all the weaker trees, trees closer to the house, and to preserve larger trees.” As noted above, these works may have been accepted through agreement or further pre-application advice or, for example, inclusion of the tree works in the planning application submission. Making the Tree Preservation Order on the remaining trees does not lead to the conclusion that all the trees already removed would have been required to be retained. There may have been a clear case for the removal of, or works to, some of the trees, but this was not presented to the Planning Authority in the form of the survey. If not agreed informally with the Planning Authority, and as works were ongoing, making the Tree Preservation Order was the only means to safeguard the retained trees.
- “Retaining the trees could affect light in the house and risk trees failing in high winds and impacting the house.” As noted above, it has never been the case that all trees would necessarily have to be retained, but the Planning Authority will take a precautionary approach until a suitable tree survey is presented. Protection of amenity and structures are considered in assessing proposed tree works. A Tree Preservation Order is not used as a means of hindering beneficial management work, which may include regular felling and thinning.
- “The retained trees are now sustainable, of good form and will provide conservation and landscape value for decades to come. They should be well protected through the development phase.” Making the Tree Preservation Order has no effect on this statement, and an application can be made for any works considered necessary through survey.

- “The works will allow the woodland to flourish.” Making the Tree Preservation Order has no effect on this statement, and an application can be made for any works considered necessary through survey.
- “The trees are in a private site.” This is not relevant to the assessment and merit of the Tree Preservation Order, in terms of public amenity.
- “The Council has not carried out a survey of the trees or reviewed the tree survey.” The tree survey was not provided to the Planning Authority for it to be reviewed. In assessing whether a Tree Preservation Order is merited, assessment is made of whether it is considered expedient in the interests of amenity and/or where the trees, groups of trees or woodlands are of cultural or historical significance. A tree survey is not necessarily required for this assessment, noting the point above that the Tree Preservation Order does not prevent tree works, simply that the tree works must be approved.
- “A Tree Preservation Order was not made when previous planning permission was approved.” When the previous planning permission was granted in 2012, extensive felling or other tree works within the woodland were not undertaken, as they were in November 2022, so simply there was not the same exhibited threat to the woodland to merit Tree Preservation Order. Indeed, the previous planning approval included creation of a woodland walk amongst the retained trees. The situations are very different.

5.6.

The woodland was assessed as meriting protection by Tree Preservation Order, including consideration of condition, its location adjacent to a busy road with views of and into the woodland. In the interests of amenity, as the woodland contributes to the character and attractiveness of the area, the Tree Preservation Order allows the Council to prevent tree work which would harm amenity and attach appropriate conditions to any consent for tree work.

6. Corporate Governance

This report relates to the Council complying with its statutory duties as a Planning Authority and therefore does not directly support and contribute to the improved outcomes for communities as outlined in the Council Plan and Local Outcomes Improvement Plan.

7. Financial Implications

The costs incurred to date on the Tree Preservation Order, which include advertising costs and staff time, have been resourced from within the existing Planning Service budget.

8. Legal Aspects

8.1.

Pursuant to section 160 of the Town and Country Planning (Scotland) Act 1997, the Council has the power to make a Tree Preservation Order where it appears to the Council to be expedient in the interests of amenity and/or where the trees, groups of

trees or woodlands are of cultural or historical significance. Such a Tree Preservation Order has been made by the Council but it will expire after six months if not confirmed by the Council as planning authority.

8.2.

Pursuant to section 161(1A) of the Town and Country Planning (Scotland) Act 1997, the Council may confirm the Tree Preservation Order either without modification or subject to such modifications as it considers expedient.

9. Contact Officers

Hayley Green, Corporate Director for Neighbourhood Services and Infrastructure, extension 2301, Email hayley.green@orkney.gov.uk.

Roddy Mackay, Head of Planning and Community Protection, extension 2350, Email rodny.mackay@orkney.gov.uk.

Jamie Macvie, Service Manager (Development Planning), extension 2529, Email jamie.macvie@orkney.gov.uk.

10. Appendices

Appendix 1: Tree Preservation Order.

Appendix 2: Representations.

Appendix 1

ORKNEY ISLANDS COUNCIL

TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997, AS AMENDED

THE ORKNEY ISLANDS COUNCIL TREE PRESERVATION ORDER (GRAINBANK, KIRKWALL) NO.1 2022

Notice is hereby given that Orkney Islands Council (referred to below as the "Council") as planning authority in exercise of the powers conferred upon them by Section 160 of the above Act (hereinafter referred to as "the Act") have made The Orkney Islands Council Tree Preservation Order (Grainbank, Kirkwall) No.1 2022 (referred to below as the "Order") in respect of a woodland at Grainbank in Kirkwall. The Order takes effect on 8 November 2022. The Order has been made for the reason that in terms of Section 160(1A)(a) it is expedient in the interests of amenity to make the Order as the woodland contributes to the character and attractiveness of the area and there is work proposed which would damage the group and reduce its landscape impact. A tree preservation order will allow the Council to prevent tree work which would harm amenity and place appropriate conditions on any consent for tree work.

The Order can be viewed on the Council's website. A certified copy of the Order will be deposited at Customer Services, Council Offices, School Place, Kirkwall, Orkney, KW15 1NY for inspection by any person without payment on Monday to Friday between 10am and 4pm. An electronic copy of the Order can be provided by email free of charge by sending a request to planning@orkney.gov.uk

Objections and representations in respect of the Order may be made to the planning authority in accordance with Regulation 5 of the Town and Country Planning (Tree Preservation Order and Trees and Conservation Areas) (Scotland) Regulations 2010. Any objection or representation must be in writing and shall be duly made if it states its grounds, specify the particular trees in respect of which it is made and is received by the planning authority no later than 16 December 2022.

Objections and representations should be sent to the Service Manager, Development Management, Neighbourhood Services and Infrastructure, Council Offices, School Place, Kirkwall, Orkney, KW15 1NY or by email to planning@orkney.gov.uk

Dated: 8 November 2022



Hayley Green

Corporate Director

Orkney Islands Council

Council Offices

School Place

Kirkwall KW15 1NY

ORKNEY ISLANDS COUNCIL

TREE PRESERVATION ORDER

The Town and Country Planning (Scotland) Act 1997

The Orkney Islands Council Tree Preservation Order (Grainbank, Kirkwall) No.1 2022

Orkney Islands Council makes the following Tree Preservation Order in exercise of powers conferred by section 160 of the Town and Country Planning (Scotland) Act 1997, as amended, and all other powers enabling them to do so.

Citation, commencement and interpretation

1.-(1) This Order may be cited as The Orkney Islands Council Tree Preservation Order (Grainbank, Kirkwall) No.1 2022 and takes effect on 8 November 2022.

(2) In this Order-

“the 1992 Order” means the Town and Country Planning (General Permitted Development) (Scotland) Order 1992;

“the Act means the Town and Country Planning (Scotland) Act 1997, as amended;

“protected tree” has the meaning given in article 2; and

“the map” means the plan annexed and assigned as relative hereto.

Protected Trees

2.-(1) A protected tree is a tree specified in Schedule 1 to this Order or comprised in a group of trees or in a woodland specified in that Schedule.

(2) The position of such trees, groups of trees or woodlands is identified in the manner indicated in Schedule 1 and on the map annexed to this Order.

(3) Where any ambiguity as to the identification of a protected tree arises between the map and the specification Schedule 1 to this Order, the map is to prevail.

Prohibited acts

3.-Subject to the provisions of the Act and the exemption specified in article 5, no person shall, except with and in accordance with, the consent of the planning authority:

(a) cut down, top, lop, uproot, wilfully damage or wilfully destroy a protected tree; or

(b) cause or permit the cutting down, topping, lopping, operating, or wilful damage or wilful destruction of, a protected tree.

Application for consent

4.-(1) An application for consent to the carrying out of any act prohibited by a tree preservation order must be made to the planning authority and must:

- (a) specify the operation for which consent is sought;
- (b) give reasons for carrying out such operation; and
- (c) identify the protected tree or trees which would be affected by such operations.

(2) The protected tree or trees must be identified by means of a map or plan of a size and scale sufficient for the purpose.

Exemptions

5.-Nothing in article 3 is to prevent-

(a) the cutting down of a tree in accordance with a felling permission granted by Scottish Forestry under the Forestry and Land Management (Scotland) Act 2018;

(b) the cutting down, uprooting, topping or lopping of a tree on land and the occupation of the planning authority when this is done by or with the consent of that authority;

(c) the cutting down, uprooting, topping or lopping of a tree having a diameter not exceeding 75 millimetres;

(d) the cutting down or operating in a woodland of a tree having a diameter not exceeding 100 millimetres where this is done to improve the growth of other trees;

(e) the cutting down, uprooting, topping or lopping of a tree by, or on behalf of, Scottish Forestry on land placed at their disposal in pursuance of the Forestry and Land Management (Scotland) Act 2018 or otherwise under their management or supervision;

(f) the cutting down, topping, lopping or uprooting of a tree by or at the request of a statutory undertaker, where the land on which the tree is situated as operational land of the statutory undertaker and the work is necessary:

(i) in the interests of the safe operations of the undertaking;

(ii) in connection with the inspection, repair or renewal of any sewers, mains, pipes, cables or other apparatus of the statutory undertaker; or

(iii) to enable a statutory undertaker to carry out development for which planning permission is granted by the 1992 Order, provided that notice in writing of the proposed operations is given to the planning authority as soon as practicable after the operations become necessary;

(g) the cutting down, topping, lopping or uprooting of a tree cultivated for the production of fruit in the course of a business or trade with such work is in the interests of that business or trade;

(h) the pruning, in accordance with good horticultural practice, of any tree cultivated for the production of fruit;

(i) the cutting down, topping, lopping or uprooting of a tree that work is immediately required to enable a person to carry out works to implement a planning permission (other than an outline planning permission or planning permission in principle) granted on an application under Part 3 or section 242A the Act, or deemed to have been granted (whether for purposes of Part 3 of the Act or otherwise); or

(j) the cutting down, topping, lopping or uprooting of a tree by, or at the request of, SEPA to enable SEPA to carry out development for which planning permission is granted by the 1992 Order.

Directions as to the planting

6.- (1) Where consent is granted under this Order for the felling in the course of forestry operations of any part of the woodland area, the planning authority may give to the owner of the land on which that part of the woodland is situated a direction in writing specifying the manner in which and the time within which the owner must replant trees on the land.

(2) Where a direction is given under paragraph (1) of this article and trees on the relevant land are felled (pursuant to the consent), the owner of that land must replant trees on the land in accordance with the direction.

(3) Any direction given under paragraph (1) of this article may include requirements as to:

(a) species;

(b) number of trees per hectare;

(c) the erection and maintenance of fencing necessary for the protection of the replanting;

(d) the preparations of ground, training, removal of brushwood, lop and top; and

(e) protective measures against fire.

Adaptation and modification of the Act

7.- (1) The provisions of the Town and Country Planning (Scotland) Act 1997 mentioned in column 1 of Part 1 of Schedule 2 to this Order are to have effect, in relation to consents under this Order and applications for such consent, subject to the adaptations and modifications specified in column 2 of Part 1 that Schedule.

(2) The provisions referred to in paragraph (1) of this article, as so adapted and modified, are set out in Part 2 of Schedule 2 to this Order.

Compensation

8.-(1) Subject to paragraphs (2) to (5) of this article, any person who has suffered loss or damage caused or incurred in consequence of:

(a) any refusal of consent required under this Order; or

(b) any grant of such consent subject to conditions, is entitled to recover from the planning authority compensation in respect of loss or damage.

(2) A claim for compensation under this Order shall be made by serving on the planning authority a notice in writing stating the grounds of the claim and the amount claimed.

(3) The time within which any such notice shall be given as a period of six months:

(a) from the date of the decision of the planning authority; or

(b) where an appeal has been made to Scottish Ministers against the decision of the planning authority, from the date of the decision of Scottish Ministers on the appeal.

(4) No claimant may be made under this article if the amount in respect of which the claim would otherwise have been made is less than £1,000.

(5) No compensation shall be payable to a person:

(a) for loss of development value or other diminution in the value of the land;

(b) for loss or damage which was not reasonably foreseeable when consent was refused or was granted subject to conditions;

(c) for loss or damage reasonably foreseeable by that person and attributable to failure to take reasonable steps to avert the loss or damage or to mitigate its extent; or

(d) for costs incurred in appealing to the Scottish Ministers against the refusal of any consent required under this Order or the grant of any such consent subject to conditions.

(6) In this article:

“development value” means an increase in value attributable to the prospect of development; and, in relation to any land, the development of it shall include the clearing of it.

Application of tree preservation order to future planting

9. This Order applies to any tree specified in Schedule 1 of this Order which is to be planted in pursuance of a condition imposed by virtue of section 159(a) of the Act as from the time when those trees are planted.

IN WITNESS WHEREOF these presents consisting of this and the preceding six pages together with the Schedules and map annexed are Sealed with the Seal of Orkney Islands Council and signed on its behalf by Sheila Tulloch, Service Manager (Legal Services) at Kirkwall, Orkney on the Eighth day of November Two Thousand and Twenty Two.

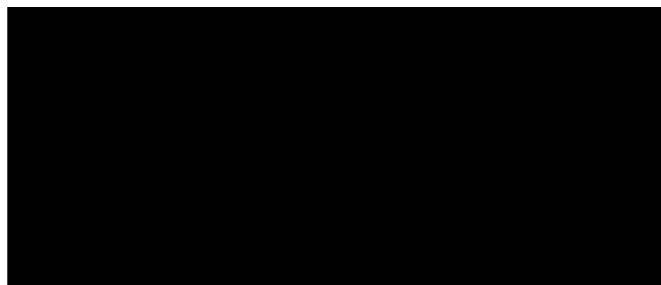


SCHEDULE 1

Article 2

Trees Specified Individually (coloured green on the map)		
No. on Map	Description	Situation
None		
Trees Specified by Reference to an Area (with a continuous black line on the map)		
No. on Map	Description	Situation
None		
Groups of Trees (with a broken black line on the map)		
No. on Map	Description	Situation
None		
Woodlands (within a red line on the map)		
No. on Map	Description	Situation
W1	Woodland comprising mainly of Sycamore	Woodland comprising the curtilage of Grainbank, Kirkwall, principally to the east and south of the buildings, with a narrow strip to the north boundary, and being part of the Title currently registered in the Land Register with the Title Number OAZ2156.

This is Schedule 1 referred to in the foregoing Tree Preservation Order by Orkney Islands Council dated 8 November 2022.



SCHEDULE 2

PART 1

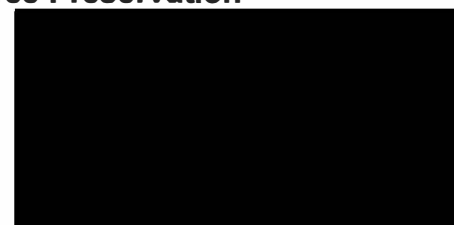
PROVISIONS OF THE TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997 APPLIED WITH ADAPTATIONS OR MODIFICATIONS

Provision of the Town and Country Planning (Scotland Act 1997)	Adaptation or Modification
Section 36 (Registers of applications etc.)	<p>For subsections (1) to (3) substitute:</p> <p>“(1) The planning authority shall in relation to this Order keep a register of all applications for consent under this Order, containing:</p> <p>(a) information as to the nature of such applications, the decisions of the planning authority thereon,</p> <p>(b) information as to any appeal to Scottish Ministers and the decisions of Scottish Ministers thereon, any compensation awarded in consequence of the decisions of the planning authority or Scottish Ministers; and</p> <p>(c) any directions as to the replanting of woodlands.”</p>
Section 37 (determination of applications: general considerations)	<p>(a) In subsection (1):</p> <p>(d) for “planning permission” where those words first appear; substitute “consent under a tree preservation order”;</p> <p>(e) for “sections 27B(2) and 59(1)(b)” substitute “subsections (1A) and (1B)”;</p> <p>(f) for “planning permission” in both of the other places where those words appear substitute “consent under the order”;</p> <p>(g) after “think fit”, insert “(including conditions limiting the duration of the consent requiring the replacement of trees)”;</p> <p>(b) After subsection (1) insert-</p> <p>“(1A) Where an application relates to an area of woodland, the authority shall grant consent so far as accords with the practice of good forestry, unless they are satisfied that the granting of consent would fail to secure the maintenance of the special character of the woodland of the woodland character of the area.</p> <p>(1B) Where the authority grant consent for the felling of trees any woodland area they shall not impose conditions requiring replacement where such felling is carried out in the course of forestry operations (but may give directions for securing replanting).”</p> <p>(c) Omit the subsections (2) and (3); and</p> <p>(d) In subsection (4) for paragraphs (a) to (c) substitute-</p> <p>“(a) consent under a tree preservation order; or</p> <p>(b) any consent, agreement or approval required by a condition imposed on the grant of such consent,”</p>
Section 44 (effect of planning permission)	<p>(a) references to ‘planning permission’ are to be treated as references to ‘consent required by a tree preservation order’;</p> <p>(b) for ‘the permission’ substitute ‘the consent’;</p>

	<p>(c) for 'to develop land' substitute 'to carry out works'; and</p> <p>(d) after 'land' insert 'on which the tree or trees to which the consent relates is situated'.</p> <p>(e) Omit subsections (2) and (3).</p>
Section 47 right to appeal against planning decisions and failure to take such decisions)	<p>(a) For subsection (1) substitute-</p> <p>“(1) Where a planning authority-</p> <p>(a) refuse an application for consent under a tree preservation order or grant it subject to condition;</p> <p>(b) refuse an application for any consent, agreement or approval of that authority required by a condition imposed on a grant of consent under such an order;</p> <p>(c) give a direction under a tree preservation order, or refuse an application for any consent, agreement or approval of that authority required by such a direction; or</p> <p>(d) failed to determine any such application as is referred to in paragraphs (a) to (c) within the period of 2 months beginning with the date on which the application was received by the authority,</p> <p>the applicant may notice of appeal to the Scottish Ministers against the decision”.</p> <p>(b) Omit subsections (1A), (2) and (4).</p> <p>(c) for subsection (3) substitute-</p> <p>“(3) Any appeal under this section shall be made in writing, specifying the grounds on which the appeal is made; and such notice shall be served-</p> <p>(a) In respect of a matter mentioned in any of paragraphs (a) to (c) of subsection (1) within the period of 28 days from the receipt of notification of the authority’s decision or direction or within such longer period as the Scottish Ministers may allow;</p> <p>(b) In respect of such a failure as is mentioned in paragraph (d) of that subsection, at any time after the expiration of the period mentioned in that paragraph, but if the authority have informed the applicant that the application has been refused, or granted subject to conditions, before an appeal has been made, an appeal may only be made against that refusal or grant will stop”</p> <p>For subsection (5) substitute-</p> <p>“(5) For the purposes of the application of section 48(1), in relation to an appeal made under subsection (1)(d), it shall be assumed that the authority decided to refuse the application in question.”</p>
Section 48 (determination of appeal)	<p>(a) In subsection (5)(a)-</p> <p>(i) for "sections 33, 37(1) to (3), 38(1) to (3), 41(1) and (2) and 42 of Part I of Schedule 3" (section 37(1), (1A) and (1B)"; and</p> <p>(ii) for "planning permission" substitute "consent under a tree preservation order".</p> <p>(b) Omit subsections (5)(b) and (6) to (8).</p>



This is Part 1 of Schedule 2 referred to in the foregoing Tree Preservation Order by Orkney Islands Council dated 8 November 2022.



SCHEDULE 2

PART 2

PROVISIONS OF THE TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997, AS ADAPTED AND MODIFIED BY PART 1

The following provisions of the Town and Country Planning Act 1997, as adapted and modified by Part 1 of this Schedule, apply in relation to consents, and applications for consent, under this Order.

Section 36

36. (1) The planning authority shall in relation to this Order keep a register of all applications for consent under this Order, containing:

- (a) information as to the nature of such applications, the decisions of the planning authority thereon,
- (b) information as to any appeal to Scottish Ministers and the decisions of Scottish Ministers thereon, and any compensation awarded in consequence of the decisions of the planning authority or Scottish Ministers; and

any directions as to the replanting of woodlands.

(4) Every register kept under this section shall be available for inspection by the public at all reasonable hours.

Section 37

37. (1) Where an application is made to a planning authority for consent under a tree preservation order:

- (a) subject to subsections (1A) and (1B) they may grant consent under the order, either unconditionally or subject to such conditions as they think fit (including conditions limiting the duration of the consent requiring the replacement of trees); or

- (b) they may refuse consent under the order.

(1A) Where an application relates to an area of woodland, the authority shall grant consent so far as accords with the practice of good forestry, unless they are satisfied that the granting of consent would fail to secure the maintenance of the special character of the woodland or David and character of the area.

(1B) Where the authority grant consent for the felling of trees in the woodland area they shall not impose conditions requiring replacement with such felling is carried out in the course of forestry operations (but may give directions for securing replanting).

(4) The date of grant or refusal of:

- (a) consent under a tree preservation order; or

(b) any consent, agreement or approval required by a condition imposed on the grant of such consent,

shall be the date on which the notice of the planning authority's decision bears to have been signed on behalf of the authority.

Section 44(1)

44.-(1) [Without prejudice to the provision of this Part as to the duration, revocation or modification of consent required by a tree preservation order], any grant of consent required by a tree preservation order shall (except in so far as the consent otherwise provide) enure for the benefit of the land on which the tree or trees to which the consent relates is situated and all persons for the time being interested in it.

Section 47

47.-(1) Where the planning authority:

- (a) refuse an application for consent under a tree preservation order or granted subject to conditions;
- (b) refuse an application for any consent, agreement or approval of that authority required by a condition imposed on a grant of consent under such an order;
- (c) give a direction under a tree preservation order, or refuse an application for any consent, agreement or approval of that authority required by such a direction; or
- (d) has not given notice of their decision on such an application within the period of 2 months beginning with the date on which the application was received by the authority [or within such extended period as may at any time be agreed upon in writing between the applicant and the authority],

the applicant may by notice of appeal to Scottish Ministers.

(3) Any appeal under this section shall be made in writing, specifying the grounds on which the appeal was made; and such notice shall be served on the Scottish Ministers within a period of three months beginning with, in the case of an appeal made under:

- (a) an appeal under paragraphs (a) to (c) of subsection (1), the date of the decision notice or the direction, as the case may be; and;
- (b) paragraph (d) of that subsection, the date of expiry of the period mentioned in that paragraph."

(5) For the purposes of the application of section 48(1), in relation to an appeal made under subsection (1)(d), it shall be assumed that the authority decided to refuse the application in question.

Section 47A

47A.-(1) in an appeal under section 47(1), a party to the proceedings is not to raise any matter which was not before the planning authority at the time of the decision appealed against was made unless that party can demonstrate:

- (a) that the matter could not have been raised before that time, or
- (b) that its not being raised before that time was a consequence of exceptional circumstances.

(2) Nothing in subsection (1) affects any requirement or entitlement to have regard to-

- (a) the provisions of the development plan, or
- (b) any other material considerations.

Section 48

48.-(1) Appeal under Section 47 the Scottish Ministers may:

- (a) allow or dismiss the appeal, or
- (b) reverse or vary any part of the decision of the authority (whether the appeal relates to that part of it or not),

and may deal with the application as if it had been made to them in the first instance.

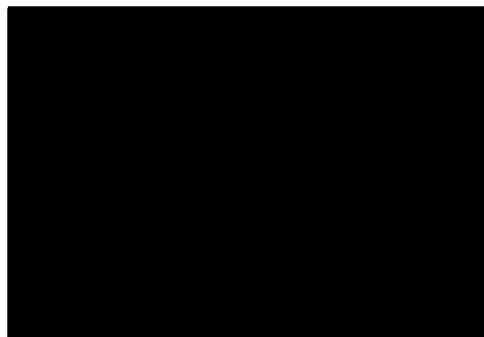
(3) If the Scottish Ministers proposed to reverse or vary any part of the decision of the planning authority to which the appeal does not relate, they shall give notice of their intention to the planning authority and to the appellant and shall give each of them an opportunity of making representations about the proposal.

(5) In relation to an appeal to the Scottish Ministers under section 47:

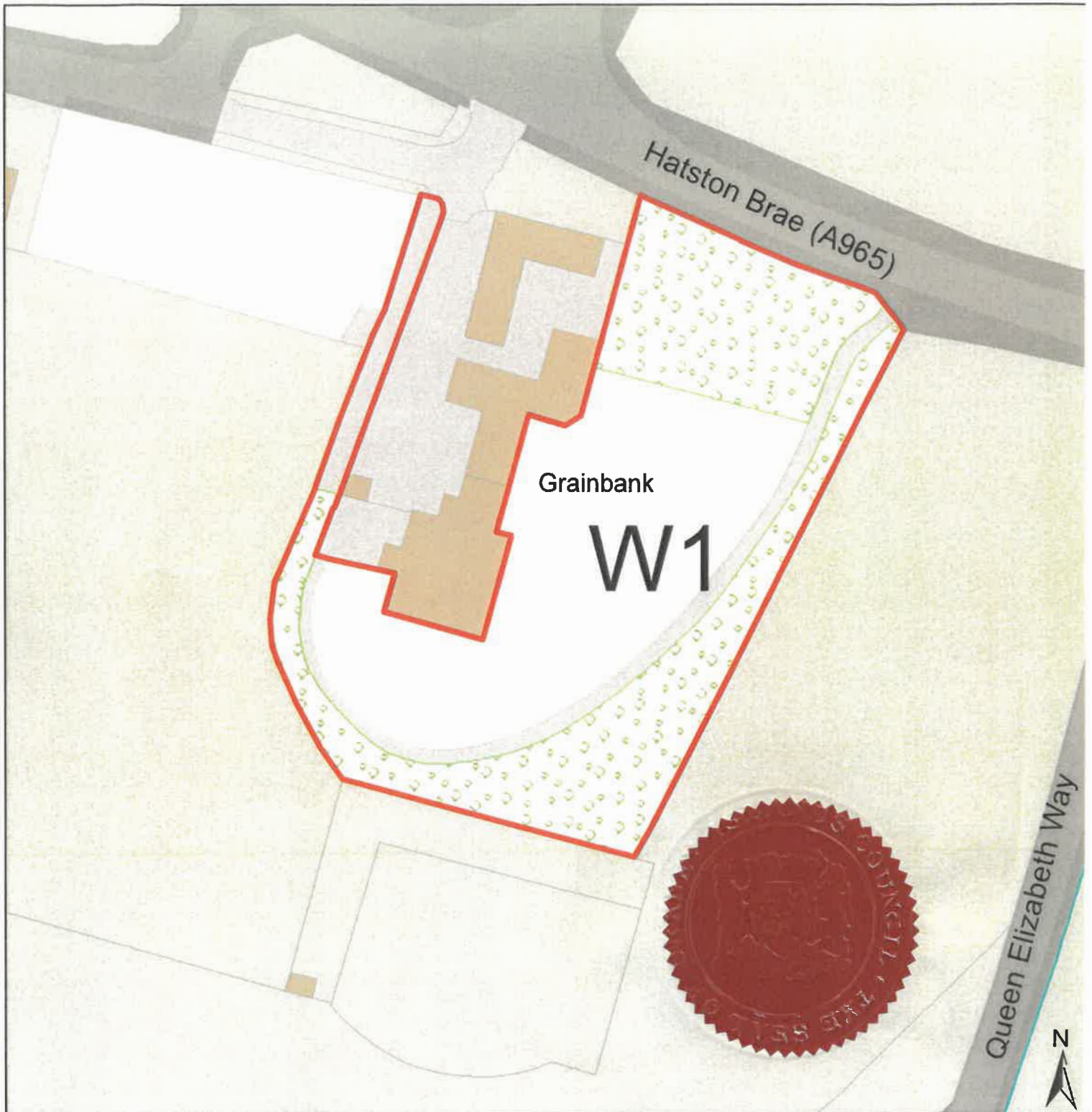
(a) sections 37(1), (1A) and (1B) shall apply, with any necessary modifications, in relation to an appeal to the Scottish Ministers under section 47 as they apply in relation to an application for consent under a tree preservation order which falls to be determined by the authority.

(9) Schedule 4 applies to appeals under section 47, including appeals under that section as applied by or under any other provision of this Act.

This is Part 2 of Schedule 2 referred to in the foregoing Tree Preservation Order by Orkney Islands Council dated 8 November 2022.



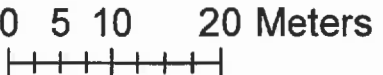
**This is the map referred to in the foregoing The Orkney Islands Council
Tree Preservation Order (Grainbank, Kirkwall) No.1 2022**



**The Orkney Islands Council
Tree Preservation Order
(Grainbank, Kirkwall) No.1 2022**

Date: 8 November 2022

 W1

Scale 1:700  0 5 10 20 Meters

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Appendix 2

Grainbank House

Kirkwall

Orkney

KW15 1RD

Service Manager

Development Management

Neighbourhood Services and Infrastructure

Council Offices

School Place

Orkney

KW15 1NY

15th December 2022

OBJECTION TO TREE PRESERVATION ORDER No.1 2022

Dear Sir/Madam,

I am writing with regards to the notification of the intended TPO at Grainbank House, Kirkwall, Orkney KW15 1RD.

Grainbank House is a well-known property in Kirkwall in need of significant care and attention. It has been on our minds for a couple of years and we were very fortunate this year to have had an offer accepted on it, as it was a big and difficult decision for the previous owners to let go, hence not even being marketed for sale locally or further afield. Throughout the year we explored various options and possible future potential and went on to purchase Grainbank House in October 2022. We know it's going to require extensive refurbishment, but I believe we have secured this just in time before the B Listed Building went further into disrepair.

We, Mr and Mrs A Bruce along with our young family intend to renovate Grainbank House into our main residence along with holiday accommodation which has already had planning approval granted.

We invited Orkney Islands Council planning department onto the site in May 2022, along with our chosen architect to discuss renovating and restoring the main house and attached coach house as well as the possibility of developing the site further over the coming years. Planning officers [REDACTED] and [REDACTED] came along. It was a very positive, initial meeting, and the authority seemed really pleased that something was now potentially going to be happening with this tired and run-down property and that it would now potentially be given a new lease of life.

One question asked was the possibility of some kind of development in the future within the private garden site where there were dense, and overgrown trees, most of which were self-seeded and in our own opinion then, in quite poor condition. We were categorically told that the planning department would not allow these trees to be felled for any development. I, Mr Bruce asked [REDACTED] if that was his decision or that of Orkney Islands Council? His reply was 'it's the same thing isn't it'.

The next day, we commissioned a professional company, ROAVR Group to carry out a full arboriculture report on the Grainbank site. This included an in-depth tree survey with root protection, crown protection and a tree management plan for the site to ensure firstly it was safe, and also to protect, sustain and enhance the complete site. Also, we wanted to know legally what our limitations were should we, at this stage acquire Grainbank House and gardens, and again if we were going forward with any planning proposals in the future, where we were almost certain this would be required anyway. That survey was carried out on the 26th July 2022.

Full works pertaining to that survey report, which the planning authority knew had been commissioned, were carried out w/c 31st October by local contractor Ewan Mackenzie Gardening Services Ltd., after we legally owned the property. I feel we have gone about this in the most professional way possible, getting specialist advice and being considerate to the B Listed property and privately owned grounds in which it sits.

We have had not one single person, group or company say to us anything negative about the work we had carried out, in fact several people, both passing and neighbours alike have only commended what work we have done so far as it has really opened up the beautiful building that is there. The public are excited and pleased to see such a building starting to get the attention it so badly needs.

On the 8th November 2022, Orkney Islands Council's planning department officers arrived unannounced on site, which is never an issue. [REDACTED] and [REDACTED] presented, and provided me with a blanket Tree Preservation Order for the whole of the Grainbank site, excluding the walled garden.

Clearly the planning department were not happy with the professional survey work that was carried out, and this was made clear to the contractor on another unannounced visit on Thursday 3rd November 2022. It was made clear to me by the contractor on the above date that they were 'shocked' and 'disappointed' to see this works being carried out, again within a private garden, that is not within the Conservation area of Kirkwall.

[REDACTED] quoted 'there had been several complaints to the department about the tree works being carried out at Grainbank' which I honestly found quite surprising. Nevertheless, all these complaints will be recorded, validated and used in making the order should it become permanent. We as owners of the private site now feel impelled to make an official Freedom of Information request, unless publicly published, to confirm how many complaints were officially made to the planning authority between the 31/10/22 (first day of felling) up to 08/11/22 when Mr Bruce was issued with the TPO on site.

Now that we have now been given this notification of an intended TPO at Grainbank House, Kirkwall, Orkney, KW15 1RD. We would like to put forward our objection to this Tree Preservation Order No.1 2022, on the grounds that: -

- We, as owners of Grainbank House and gardens which is a fully a private site with no unauthorised public access feel there is no requirement to place such an order on this site.
- We have taken full professional arboriculturist advice and commissioned an in-depth survey and tree management plan going forward, at our own significant cost to establish the best way forward to maintain, protect and enhance the private site as we want to ensure it is now fully safe for ourselves, our children and any authorised guests.

Please take note that this is something we were not required to do, we would have been well within our rights to clear fell that site if we so wished – but that is not our intention and i feel the planning department know that.

Ref: The Woodland trust states that if you own your own home, you don't need permission to fell a tree that's solely within your garden.

<https://www.woodlandtrust.org.uk/blog/2021/03/tree-cutting-permission/>

<https://forestry.gov.scot/publications/678-felling-permission-application-guidance/viewdocument/678>

- Orkney Islands Council planning authority made this order, I believe on a whim, and have done no investigatory work themselves, carried out no survey work of the trees, nor have they identified, plotted, classified or ascertained the health of the trees whatsoever, and had never requested to see our professional survey before the blanket TPO was placed on the Grainbank site.
- The main garden, and the trees within form no part of the graded B listing Grainbank House, nor is it situated in Kirkwall's conservation area. Ref: -
<https://portal.historicenvironment.scot/designation/LB45972>
- Orkney Islands Councils planning department didn't place a blanket TPO on the site when previous planning permission was approved and a selection of trees were due to be felled - so why is anything different now?

Can the OIC planning department please explain in what context 'amenity' is being referred to within the TPO?

Amenity within a public area would come down to the interpretation of one's views or opinions.

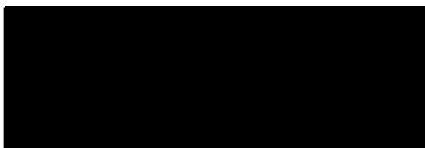
The amenity area surrounding the private grounds at Grainbank will be marginally reduced, if at all to the public looking in as the works carried out such as crown reductions and crown lifting will allow remaining trees to continue to flourish for years to come.

If the Orkney Islands Council and the planning authority within are still insisting a Tree Protection Order is placed on the Grainbank site, as owners we would like to see a full survey carried out by them detailing which individual trees merit a TPO, which can then be compared like for like against the professional survey we had carried out in the best interests of the Grainbank site.

Following that, if the TPO is confirmed, we will almost certainly appeal the local authority's decision with the evidence-based survey and facts we have.

We do hope however that it will not come to that. We are here to work with the planning department, not against them, however I must say regardless of what we are trying to do for the better just now, we feel like we are getting little support from the local planning team and it very much feels like arduous road ahead.

Yours sincerely,



Mr Albert & Mrs Aileen Bruce.

Ewan Mackenzie

Garden Services

VAT NO: 938 4728 80

Service Manager
Development management
Neighbourhood Services & infrastructure
Council Offices
School Place
Kirkwall

Ewan Mackenzie Garden Services

The Garages

Cromwell Road

Kirkwall

Orkney, KW15 1LG

07841351964

info@ewanmackenziegardening.co.uk

www.ewanmackenziegardening.co.uk

10/12/22

Objection to Tree preservation Order imposed at Grainbank Kirkwall.

I am writing this letter in objection to the TPO that was put in place on the trees at Grainbank house, Kirkwall which came into effect on 8th November 2022.

As the contractor employed by the owner of the property to carry out the tree works, I feel that this TPO is ridiculous and wholly unnecessary. The first point that I would like to make is that this is not a woodland as [REDACTED] describes it, it is a town garden with four Clear boundaries and large lawn areas.

Secondly all work was carried out in accordance with a professional tree survey which was carried out by a reputable national Tree survey Company employed by the owner of the property at his own cost months prior to preserve the vast majority of the trees for future enjoyment and eliminate the weaker stems that will potentially cause damage to the building or persons within the grounds.

The whole point of the tree works which may I add was completed before the 8th November was to remove all the weaker trees, remove trees close to the house, to preserve the larger trees and to allow more light in to the house and the garden so that grass will be able to survive and thrive.

From my personal audience with [REDACTED] on Wednesday 2nd November 2022 when he arrived on site [REDACTED]

[REDACTED] decided he didn't like what was being done and [REDACTED] decided to try and prevent any more happening from telling myself and my staff that we should stop right away, but as he said I cant stop you but I am going to put an emergency TPO on the whole site and ill be back later to enforce it, by which point you will

have to stop. After he left we carried on as planned until the work was completed the next day and we never heard from him again. As I studied Arboriculture at HNC level back in 2001 I know that there is no such thing as an emergency TPO that can be put on a site within a few hours. I also knew that until the order was enforced and published there was nothing he could do and we were not breaking any laws or rules.

Not once did he ask to what extent are you doing work, he did not ask to see the copy of the survey we were working too. He did not ask who the company that carried out the survey was.

[REDACTED]

[REDACTED]

Surely a decision to enforce a TPO on a site like this should be discussed by a group of people within planning, after visiting the site, discussing the proposed work and what is to be achieved from the work, before deciding.

No body has a right to deprive people of light into their home and everybody should feel safe within their home without worrying about old unbalanced trees potentially falling into the building on a stormy day.

[REDACTED]

[REDACTED] Tree surveying is a very skilled job that not everybody can do and is a real can of worms and you need to really know your stuff. I personally have done a 2-day short course 5 years ago and it was very intense, and I decided its not for me so I know whats involved from a basic stand point.

This is not an isolated case of [REDACTED] preventing trees from being trimmed or removed for house builds or extensions. There is several examples I know of recently, a few I have been involved in where trees that should have been removed most of which have no value or shape have been made to be retained when they should be removed, when in a garden with many other trees so a few gone won't be missed. [REDACTED]

[REDACTED] surely it should be a committee decision where it can be fairly discussed before a decision is made.

I have worked within the Arboricultural industry since 1997 and fully qualified since 2001 and worked for a few companies south gaining knowledge and skills along the way before working for myself in 2007. I fully understand and support the need for conservation, TPO's and planning conditions on trees within all areas but a local authority needs to work along side the public when it comes to trees and properties, be reasonable and give proper backed up reasons for objecting to works instead of the approach OIC has taken which is to basically only allow very minimum work if any at all [REDACTED]

It has gotten to the point where if I'm asked to do work on trees in conservation areas I'm turning it down because its not worth the hassle [REDACTED] when sometimes its perfectly reasonable.

I could keep going on for pages but I feel I have made my point clear and that changes need to be made on the way that planning manages trees and be more understanding towards tree owners and understand why they want to do the work to their trees.

Regards

Ewan MacKenzie

From: Nic Paterson
Sent: 13 December 2022 18:08
To: planning <planning@orkney.gov.uk>
Subject: Objection to TPO No 1 2022

Service Manager
Development Management
Neighbourhood Services and Infrastructure
Council Offices
School Place
Kirkwall
KW15 1NY

Dear Sirs,

Having noticed the work being done at Grainbank House, I was interested to see the notice in The Orcadian for a Tree Preservation Order.

I have now read the document and spoken to the owner at Grainbank, and cannot understand why there is a need for such an order. It would appear that a professional survey was carried out by a reputable firm and all the work done on the woodland has been in response to their recommendations and advice.

We are all aware of the importance of preserving trees in Orkney but part and parcel of that conservation is the correct management of any woodland. That will necessitate the felling or pruning of some trees in order to protect and nurture those that remain. I notice on the Council website that similar work is being carried out on woodland for which the Council is responsible, following specialist advice.

In this case, it seems that the owner of the property has taken his responsibilities seriously and employed a specialist firm to advise on the best course of action. This has led to the removal and cutting back of some trees which will allow the woodland to flourish and grow, as well as offering the opportunity for future replanting if it will enhance the plantation. It has also opened up the vista so that the listed building previously hidden, can now be enjoyed by those passing by, something many folk have commented on favourably. The imposition of a TPO would therefore seem to be an unnecessary exercise.

I cannot understand the need for imposing such an order on this property and therefore wholeheartedly object to it.

Yours faithfully,

Nic Paterson



Woodland Solutions (Northern) Ltd t/a ROAVR Group
Marr House
Beechwood Business Park
Inverness
IV2 3BW
www.roavr-group.co.uk
T: 01463 667302

8 Dec 2022

Your ref: Grainbank Mews
Our ref: 22_5837_07_18

Dear Sir/Madam,

I am emailing in regards to the notification of the intended TPO at Grainbank House, Kirkwall, Orkney KW15 1RD.

ROAVR were contacted in July 2022 to support Mr. Albert Bruce with arboricultural consultancy at the Grainbank House site. This is refreshing as operating a nationwide consultancy we often see people undertaking the process 'back to front'.

I (as lead consultant) deployed to Orkney in late July to assess the site, provide arboricultural consultancy advice and collect data to BS5837 2012 to later support a planning application for renovation and refurbishment to the built footprint.

It was my understanding from the documents provided to me that it was the customers intention to restore and renovate the former guest house and bring it back into use by refurbishing it to a high standard.

The property has been deteriorating since 1998 with no works being carried out to the property or the grounds/gardens in the intervening years, this has lead to damage to the built footprint from not only annual extension of the more significant trees but also dense self-set natural regeneration springing up along wall lines and through the footprint.

Our customer was seeking pragmatic and robust guidance on the maintenance of this site before submitting to planning. The site is not within a Conservation Area, none of the trees were protected by a TPO and the grounds are classed as gardens within the felling licence requirements.

All the trees were categorised to the British Standard from A to U, arboricultural data tables were produced which highlighted which trees should be removed to allow restoration works, which ones should be felled due to condition and which trees should be formally pruned to improve structure or form and a tree constraints plan was produced. There was not and is not any intention to clear fell the site or damage the landscape or conservation value of what is an important local landmark.

Thirty four individual trees were surveyed and four tree groups. Over half of the trees were categorised B1 with the remainder being C1 and U.

16 individual trees (some of which were very small and dead) have been felled and parts of three tree groups consisting of young self-set natural regeneration have been removed. The retained trees are now sustainable, of good form and will provide conservation and landscape value for decades to come. They should be well protected through the development phase and the customer had commissioned at an early stage both an arboricultural method statement and tree protection plan.

If you have any queries or questions I will be happy to answer them.

Kind Regards,

Matt Harmsworth Tech.Arbor.A, Dip RS, FDS Arb, Assoc. ICFor
Lead Consultant ROAVR Group

Matthew Harmsworth

From: "elyfraser"

To: planning@orkney.gov.uk

Sent: Friday, 16 Dec, 2022 At 16:00

Subject: Tree Preservation Order Grainbank, Kirkwall No. 1 2022

Good afternoon

Tree Preservation Order Grainbank, Kirkwall No. 1 2022

I would like to lodge my support with regard to the above Notice in order to preserve the trees that remain at Grainbank.

I live at Grainepark and have walked to and from work in Kirkwall almost every day for the past 9 years. In doing so, I pass the small woodland area at Grainbank. Until recently, it was a delightful wood made up of mostly sycamore trees. It supported a variety of birds including rooks, pigeons, finches, sparrows, wrens, robins, starlings, blackbirds and thrushes. In the earlier months of the year, it was carpeted in snowdrops. This was followed by crocuses, daffodils, bluebells, cow parsley then nerines(?) in the autumn. I enjoyed walking past this lovely place as there was always something of interest to look at. Woodland is unusual in Orkney and I am astonished that so many well established trees have been felled resulting in the loss of habitat for birds, hedgehogs and other wildlife.

It is good to see the property being renovated and understand that some of the trees close to the house had to be removed for safety reasons and to let in more light, however, felling almost the entire wood is wholly unnecessary. It appears that most of the bulbs have been scooped out too. At a time when we are all being encouraged to plant trees and shrubs to reduce the effects of greenhouse gases and slow down climate change, I am bemused at this activity.

I support the protection of the remaining trees for the sake of amenity, nature, wildlife and climate change.

Yours sincerely

Eleanor Fraser

24 Grainepark

Kirkwall

KW15 1UL