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DINTING VALE

GLOSSOP

**OBJECTION TO HIGH PEAK BOROUGH COUNCIL
TREE PRESERVATION ORDER 2024 NO 314**

MARCH 2024

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Prepared for	Wain Homes (North West) Limited
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APPENDIX A: Trees included in the Order

1.0 Introduction

- 1.1 I am instructed by Claire Campbell of Wain Homes (North West) Limited, Kelburn Court, Daten Park, Warrington, WA3 6UT to make an objection to the making of Tree Preservation Order 2024 No 314 in respect of land in which Wain Homes has an interest. In accordance with regulation 6 of the Town and Country Planning (Tree Preservation) (England) Regulations 2012, this document specifies the trees about which objection is made and the grounds of objection; being principally a lack of expediency, also, that the type of Order made does not follow government guidance, also, that the Order was not duly made in the interests of amenity in accordance with the Town and Country Planning Act 1990.

2.0 Formal Objection

- 2.1 High Peak Borough council (hereafter “The Council”) made Tree Preservation Order 2024 No 314 (hereafter “The Order”) on 1st February 2024. Trees included in Schedule 1 of the Order are on land in which Wain Homes (North West) Limited has an interest.
- 2.2 In accordance with Regulation 6 of The Town and Country Planning (Tree Preservation) (England) Regulations 2012 (“The Regulations”), this document is an objection by Wain Homes (North West) Limited to the making of the Order.
- 2.3 The first grounds of objection are a lack of expedience. The grounds are detailed in the following section. This objection is made in relation to all the trees included in Schedule 1 of the Order.
- 2.4 Without prejudice to the first grounds of objection, an objection is also made on the grounds of Order type. The grounds are detailed in the following section.
- 2.5 Without prejudice to the first and second grounds of objection, an objection is also made on grounds that the Order is not in the interests of amenity. This "amenity" objection is made in relation to some but not all of the trees included in Schedule 1 of the Order. These are identified in the following section.

Trees to which this objection relates

- 2.6 The Order as made covers trees on land to the south and south-west of Dinting Road on the western edge of the settlement of Glossop. The distribution of protected trees is contiguous with the red-line boundary of planning application HPK/2022/0456 submitted in October 2022 by Wain Homes (North West) Limited for residential development. The application was refused on 27th October 2023 and an appeal is ongoing (appeal ref: APP/H1033/W/24/3339815).
- 2.7 This objection relates to all trees covered by The Order that are within the planning application red line boundary (hereafter "The Site").

3.0 Context

Site history

- 3.1 Trees within the Site are under responsible management. There is no threat to their continued presence and wellbeing that could reasonably be inferred from the current land use or management.
- 3.2 There is no history of irresponsible tree management on Site either pre or post the planning application. It has been under stable ownership and management, which has allowed the existing trees of quality and amenity to develop.

Planning context

- 3.3 A planning application for proposed residential development comprising 100 dwellings including areas of public open space, landscaping and associated works was submitted by Wain Homes (North West) Limited, in October 2022 (application ref: HPK/2022/0456). However, following the input of consultees and with the agreement of Officers the description of development was amended when further information was submitted to the Council on 19 May 2023 which resulted in the dwelling numbers being reduced from 100 to 92.
- 3.4 The application site includes all trees in respect of which the Order has been made. Removal of some trees was proposed as part of the application. This included scattered internal trees, a portion of woodland in the northern third of the site, and the woodland fringe in the sites southernmost corner, all of which are covered by the Order. The application was refused on 27th October 2023 and an appeal has been made against this refusal.
- 3.5 In November 2021, a year prior to the planning application, an independent assessment of the site's trees was commissioned in accordance with BS 5837, the standard format for baseline assessment of the quality and condition of trees in the context of planning, which is recommended by the Council for use in support of planning applications.
- 3.6 An Arboricultural Impact Assessment (AIA) dated August 2022 (report reference: 9131.001 Version 5, last updated August 2023) was submitted to the local planning authority in support of the application. The AIA included a detailed inspection of all trees on or within influencing distance of the application site by a qualified Arboricultural Consultant; all of the trees included in Schedule 1 of the Order were independently assessed and described by this report. The report was written in accordance with BS 5837:2012 Trees in relation to design, demolition and construction and constitutes the appropriate delivery of tree-related information into the planning system as recommended in Annex B.1 of BS5837:2012.

- 3.7 A table of features (individual trees, groups of trees and woodlands) recorded in Arboricultural Impact Assessment that are included in the Order is provided at Appendix A of this document, along with their BS 5837 quality category and the outcome for each tree which would have been secured by the planning application. The table has been derived by visually comparing the Order and the tree survey plans. In the most part, the Area included in the Order follows the red-line boundary of the planning application and so it has been assumed that all trees growing inside the site are intended to be included.
- 3.8 In total, the Order is interpreted as including trees that were recorded by the Tree Survey as 12 individual trees, all or part of 9 groups of trees, and parts of 4 woodland compartments.
- 3.9 The applicant has engaged proactively with the Council in consultation regarding the intended development of the site and the protection and role of trees therein, including through consultation with the tree officer, and by submission of supporting documents as part of a planning application in accordance with best practice. The trees have been managed and preserved in good faith throughout the preparation, submission and post-determination of a planning application, which is understood to represent the appropriate means of determining the future treatment of all of the site's trees.
- 3.10 There is no evidence that the owner has sought to downplay or disguise the presence or quality of trees or to pre-emptively remove them to support planning objectives. The development is promoted by Wain Homes, a reputable organisation operating under professional advice in accordance with all relevant legal and regulatory constraints. There are no reasonable grounds to anticipate that they would cause or permit improper tree removal within the Site.
- 3.11 An appeal process has commenced, therefore there is no reasonable grounds for anticipating tree removal or works because these would be prejudicial to the planning process. Removal of trees would alter the baseline condition and material considerations, which may jeopardise the robustness of any future consent against legal challenge. It would therefore be contrary to the interests of the landowner to instruct or undertake tree works until the appeal process has been concluded. The introduction of mandatory Biodiversity Net Gain requirements under the Environment Act 2021 on 12th February 2024, which would apply to this development if a new application was submitted, further reinforces the reliance on the existing planning appeal and baseline data upon which it relies.

- 3.12 If the Council is intent on making an Order in response to an anticipated future application for development of the site, it would be common sense to make it in the context of a completed development. It may thereafter be considered expedient in the interests of amenity to make a Tree Preservation Order in respect of whichever trees the LPA has deemed should remain within the development, or even new tree planting, to secure their long-term protection. It is therefore suggested that the appropriate time to create an order would be following the discharge of Reserved Matters or planning conditions relating to tree protection, at which point such an order could be duly considered in compliance with the law, guidance and regulations. The current Order cannot and presents an obfuscation to the planning process. It also has little effect in terms of increasing or securing tree preservation at the present time.

4.0 Grounds of Objection

Expedience

- 4.1 The Town and Country Planning Act 1990, Chapter 1, Section 198 states, '*If it appears to a local planning authority that it is expedient in the interests of amenity to make provision for the preservation of trees or woodlands in their area, they may for that purpose make an order with respect to such trees, groups of trees or woodlands as may be specified in the order.*' The principal prerequisite for the making a Tree Preservation Order is not solely the amenity of the trees, but that doing so must be expedient.
- 4.2 The Government's planning practise guidance comments on the interpretation of 'expedience' as follows, '*It may be expedient to make an Order if the authority believes there is a risk of trees being felled, pruned or damaged in ways which would have a significant impact on the amenity of the area... ...In some cases the authority may believe that certain trees are at risk as a result of development pressures and may consider, where this is in the interests of amenity, that it is expedient to make an Order.*' In other words, expedience relates to an identified or perceived need for control where there would otherwise be none in respect of amenity assets. To be expedient, an order must be effective (i.e. it must make a practical difference) and it must be justifiable (i.e. it must respond to a real or perceived threat of tree works occurring).
- 4.3 Given the current planning context, in this situation the Order makes no practical difference to tree protection; there is no real threat to trees; and no reasonable grounds to perceive threat to trees. On both tests the Order is therefore not expedient.
- 4.4 BS 5837:2012 provides specific recommendations and guidance on the relationship between trees, design, demolition and construction processes. Fundamentally, it requires an accurate presentation of the number and quality of trees affected by development. This forms the baseline against which effects should be assessed. In my experience, this guidance is universally applied by local planning authorities across England as the standard for the survey, valuation, impact assessment and protection of trees in relation to development. It reflects current best practice, scientific understanding of tree function and biology and new technologies that may allow successful integration of trees and new structures. BS 5837:2012 is cited by the Planning Portal, and local and national planning policy. No other recognised standards or published methods for the production of tree survey reports suitable to support a planning application made in the UK exist.
- 4.5 At paragraph 5.2.3, BS 5837 states that '*The following factors should also be taken into account during the design process: a) the presence of tree preservation orders, conservation areas or other regulatory protection*'. The Standard therefore provides both the principle means of evaluating effects on trees in the context of development and also sets tree preservation orders within this context as secondary to the evaluation of tree quality overall.

- 4.6 At Annex B, BS 5837 states that '*Under the UK planning system, local authorities have a statutory duty to consider the protection and planting of trees when granting planning permission for proposed development. The potential effect of development on trees, whether statutorily protected (e.g. by a tree preservation order or by their inclusion within a conservation area) or not, is a material consideration that is taken into account in dealing with planning applications.*' All trees are a material consideration in the planning process and the creation of a TPO does nothing to increase the value of any tree or its weight in the planning system. The presence of a TPO does not require the retention of specific trees within a development and the absence of a TPO does not prevent the authority from requiring tree retention. In terms of material consideration and planning weight the TPO therefore has no effect and cannot be expedient.
- 4.7 The submission of the application complies with the recommendations of BS 5837 in terms of provision of information and makes no attempt to disguise the effect of the proposed development on trees. The proposed tree works (including removal) were weighed in the planning balance and considered as part of that application on its merits. At appeal, the Planning Inspectorate will have an opportunity to both require tree retention and secure new planting. The making of an Order is therefore not expedient because it does not prevent tree works to any tree which are not already prevented by another mechanism.
- 4.8 In the context of a planning appeal, removal of trees would necessitate a material amendment to the submitted application which would increase the liability of failure and cause delay and cost. This would not be in the interests of the landowner or developer and it is therefore not reasonable to make an Order on the grounds that this could occur. The Order achieves no protection that is not already afforded by the planning process and is therefore not expedient.

Order Type

- 4.9 The Order schedules all tree species within a single 'Area' for protection. The government's advice¹ in respect of Area type orders is that '*The area category is intended for short-term protection in an emergency and may not be capable of providing appropriate long-term protection. The Order will protect only those trees standing at the time it was made, so it may over time become difficult to be certain which trees are protected. Authorities are advised to only use this category as a temporary measure until they can fully assess and reclassify the trees in the area. In addition, authorities are encouraged to resurvey existing Orders which include the area category.*'

¹ Ministry of Housing, Communities and Local Government Paragraph: [029 Reference ID: 36-029-20140306](#)

- 4.10 Typically, Area orders are used where inappropriate tree felling has already started and where the making of the Order is expedient to immediately halt works that should be carefully evaluated, either as part of a TPO application or as part of a planning application. In such circumstances, the shortcomings of the 'blunt' Area type order may be justifiable because making an order with greater resolution may take more time and therefore be less effective where tree works are ongoing or imminent. This scenario or any like it does not exist at the Site, which is under stable, transparent, well-documented and responsible management. There is no 'emergency' and the type of order used therefore does not follow the government's advice regarding how orders should be made. If the Order is contrary to government advice and has therefore been improperly made, it follows that it cannot have been expedient to make it in its current form.
- 4.11 Finally, notwithstanding the planning system, there are other controls that would prevent the felling of significant trees and woodland.

Amenity

- 4.12 There is no evidence that the council has made an assessment of amenity. Several of the trees included in the Order are of limited value and therefore it cannot be in the interests of amenity to apply the Order to them. These are trees are listed in Table 2 and based on their BS 5837 quality category recorded during the tree survey that informed the Arboricultural Impact Assessment.

Table 1 Trees of low quality identified by the Arboricultural Impact Assessment

TEP survey reference	Species	BS5837 Quality
T3	Common ash	C,1
T4	Pedunculate oak	U
T5	Grey willow	C,1
G5	Hawthorn and oak	C,1
G7	Mixed broadleaves	C,2,3
G8	Spruce	C,2
G9	Mixed species	C,3
G10	Mixed conifers	C,1,2

- 4.13 This TPO, in its current form, includes 3 individual trees and 5 groups of trees which are of low quality (Category C or Category U). This assessment was made by an independent and qualified arboriculturist in accordance with BS5837. This assessment has been accepted by the council as a supporting document, which is referenced by the decision notice.

- 4.14 Category C trees are described by BS5837 as unremarkable; of limited merit; offering temporary or transient landscape benefits; and with no material conservation or other cultural value. The assessment methodology considers the quality of the tree, its context, longevity, habitat and cultural significance. The quality categories defined by the Standard should therefore be regarded in this context as a sound representation of or proxy for 'amenity'. Trees in Category C or U should not normally be protected by an Order without special justification. The council has not presented any systematic evaluation of amenity that justifies the making of the Order in respect of trees of low quality.
- 4.15 The tree survey was submitted as a supporting document for application HPK/2022/0456. This application has been validated and no challenge to the robustness of this assessment has been made by Officers. The making of the Order therefore contradicts the previous position of the council in respect of which trees have amenity value by including trees of low quality.
- 4.16 For the above reasons, an objection to the Order is made in respect of trees listed in Table 2. This objection is in addition to and separate from the objection on grounds of expediency to the making of the Order on all other trees listed at Appendix A.

5.0 Concluding statement

- 5.1 The management of all trees can be secured through the planning process, in which Wain Homes (North West) Limited has diligently and openly engaged. An application detailing tree removal and retention has already been submitted and is the subject of an active planning appeal which has the effect of preventing tree removal until the appeal has been determined and until development is complete. The Order therefore has no effect at this time and is not expedient.
- 5.2 Trees within the objection site have and continue to be under responsible management and there are no reasonable grounds for inferring a threat to their continued presence and condition. The Order is therefore unnecessary and is not expedient.
- 5.3 The council is already in receipt of an application that would, if granted upon appeal, establish an agreement to remove some of the trees covered by the Order following the discharge of relevant planning conditions. In respect of these trees, the Order constitutes an unnecessary bureaucratic distraction that does not alter the merits of the extant application and is therefore not expedient.
- 5.4 The making of an Order prejudices and obfuscates the planning process by introducing a material consideration after an application has been submitted but prior to determination of an appeal and therefore does not follow the Government's guidance which is that such Orders should be made in connection with the grant of development consent where necessary in addition to planning conditions.
- 5.5 The use of an Area Order does not follow the government's advice regarding how orders should be made in the context of this Site and has therefore been improperly made.
- 5.6 The Order includes trees of low quality, according to an assessment which the council has previously accepted. It cannot be in the interests of amenity to protect these trees and therefore the making of the Order does not follow the requirements of the Town and Country Planning Act 1990. The council had provided no evidence of its own assessment of amenity upon which the making of the Tree Preservation Order is based.
- 5.7 In consideration of these points, an objection is made to the Order and a respectful request that it be revoked on grounds of lack of expedience and, without prejudice to this point of objection, that it has been improperly made, and that it provides protection of some of the trees would not be in the interests of amenity.



APPENDIX A: Trees included in the Order

Features recorded in the Arboricultural Impact Assessment that are included in the Order

AIA Survey reference	Species	BS 5837 Quality Category	Proposal
T1	Sessile oak	B,1	Remove
T2	Weeping willow	B,1	Retain
T3	Common ash	C,1	Retain
T4	Pedunculate oak	U	Remove
T5	Grey willow	C,1	Remove
T6	Pedunculate oak	B,1,3	Retain
T7	Pedunculate oak	B,1,3	Retain
T9	Pedunculate oak	B,1,2,3	Remove
T10	Common ash	A,2,3	Remove
T11	Common ash	A,3	Remove
T12	Common ash	A,2,3	Remove
G1	Mixed broadleaves	B,2,3	Remove
G3 (part)	Mixed broadleaves	B,2,3	Remove (part)
G4 (part)	Mixed broadleaves	B,2,3	Remove
G5	Hawthorn and oak	C,1	Remove
G6	Mixed broadleaves	B,2,3	Remove
G7	Mixed broadleaves	C,2,3	Remove
G8	Spruce	C,2	Retain
G9	Mixed species	C,3	Retain
G10	Mixed conifers	C,1,2	Remove (majority)

AIA Survey reference	Species	BS 5837 Quality Category	Proposal
W1 (part)	Mixed broadleaves	A,1,2,3	Retain (majority)
W2 (part)	Mixed broadleaves	A,2,3	Retain (majority)
W5 (part)	Mixed species	A,2,3	Retain
W6 (majority)	Mixed broadleaves	A,1,2,3	Remove (part)



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