

## **EAST AYRSHIRE COUNCIL**

### **DEVELOPMENT SERVICES COMMITTEE : 1 AUGUST 2000**

#### **THE BANKHOUSE PLANTATION, DARVEL (PROVISIONAL) TREE PRESERVATION ORDER 2000**

##### **Report by Director of Development Services**

### **1. PURPOSE OF REPORT**

1.1 The purpose of this report is to advise the Committee of progress regarding the seeking of an agreement on the future management of the Bankhouse Plantation, Darvel with the owners of the plantation and to seek Committee approval for the Bankhouse Plantation, Darvel (Provisional) Tree Preservation Order 2000 to be confirmed.

### **2. BACKGROUND**

2.1 A report on Bankhouse Plantation, Darvel was made to the Development Services Committee on 29 September 1999. This report advised that the owners of the plantation, James Jones and Sons Ltd, had not responded to formal invitations to discuss future management of the woodland with the Planning Division and Legal Services.

2.2 The report also set out the legal and financial implications to the Council in the event of, either a Management Agreement being made with the owners, or no such agreement being reached, if the above provisional Tree Preservation Order was confirmed. These implications are reprised as Sections 5 and 6 of this report.

2.3 The Committee decided that the Head of Planning and Building Control should continue to try and reach agreement with James Jones and Sons Ltd regarding the future management of Bankhouse Plantation and that such an agreement should be pursued with the Forestry Commission.

### **3. CURRENT SITUATION**

3.1 Despite a further series of attempts by the Planning and Building Control Division to engage James Jones and Sons Ltd in discussions on their possibly entering into a Management Agreement for the Bankhouse Plantation with the Council, no response has been received by the Planning and Building Control Division from the owners of the plantation.

3.2 Owing to the above lack of response from James Jones and Sons Ltd there has been no basis for further discussions with the Forestry Commission on preparation of a potential Management Plan for Bankhouse Plantation.

3.3 The Forestry Commission has advised that Scottish Woodlands, agents for the owners of Bankhouse Plantation, are continuing renewal of their original Felling Licence application in respect of trees within Bankhouse Plantation. The Forestry Commission intend requesting them either to amend the above application to reflect the reduced amount of felling required by the Commission, and enter into a management agreement with the Commission or withdraw their application.

3.4 It should be borne in mind that even the above reduced felling requirements of the Forestry Commission or any potential Management Agreement made between the owners, or their agents, and the Forestry Commission might not necessarily satisfy the Council in terms of its desire to preserve the amenity of Bankhouse Plantation and which is presently given effect through the above provisional Tree Preservation Order.

3.5 The existing Bankhouse Plantation, Darvel (provisional) Tree Preservation Order 2000 expires on 15 August 2000.

#### **4. PLANNING IMPLICATIONS**

4.1 As Policy EN 19 of the Kilmarnock and Loudoun Finalised District Plan provides for the Council to designate Tree Preservation Orders in respect of all trees that contribute significantly to the appearance of the countryside it is suggested that omitting Bankhouse Plantation from such designation would run counter to this policy.

4.2 Policy ENV 5 (I) of the Draft East Ayrshire Local Plan provides for the Council to strongly encourage the protection and positive management of the remaining areas of ancient and semi-natural woodland in East Ayrshire.

#### **5. LEGAL IMPLICATIONS**

5.1 Under Section 165 of the Town and Country Planning (Scotland) Act 1997 a Tree Preservation Order may make provision for the payment of compensation in respect of loss or damage caused or incurred in consequence of the refusal of consent required under the Order, subject to such exceptions and conditions as may be specified in the Order. The exception to the compensation provision contained in the Bankhouse Plantation, Darvel (provisional) Tree Preservation Order 1999 is that no compensation shall be payable in respect of loss or damage, suffered by reason of such refusal (or grant of consent subject to conditions) where it is certified that the refusal (or grant subject to conditions) is in the interests of good forestry or, in the case of trees other than those trees comprised in woodlands, that the trees have outstanding or special amenity value. No compensation would be payable if the Council certified its satisfaction that refusal was in the interests of good forestry as verified by the Forestry Commission. It is therefore suggested that any such compensation payments for which the Council might be liable in terms of paragraph 3.4 above could be minimal. The owner could appeal to the Secretary of State against the Council's refusal to allow the above felling or certification.

## 6. FINANCIAL IMPLICATIONS

6.1 Compensation should only arise were the Council to refuse permission to fell trees covered by the TPO's. Selective felling consistent with good management could be permitted.

6.2 Any compensation to the owner for which the Council might be liable would be based on the commercial value of the tree forgone and not for any loss of value of the land on which Bankhouse Plantation stands. Given the exceptions outlined in Section 5 above it is not considered that compensation would be onerous but the level of compensation that may be payable cannot be forecast with any degree of certainty.

## 7. CONCLUSIONS

7.1 In view of the fact that no formal Management Agreement for the woodland has yet been reached between the Council and James Jones and Sons Ltd, and the continuing lack of response from the above owners of the plantation in this regard and that the amount of any compensation for which the Council could be liable under Section 165 of the Town and Country Planning (Scotland) Act 1997 might not be significant, it is suggested that the Council confirm the existing provisional Tree Preservation Order in respect of Bankhouse Plantation irrespective of whether or not a Management Agreement between the Council and the owners can be concluded or not.

## 8. RECOMMENDATIONS

8.1 It is recommended that the Committee authorise the Head of Planning and Building Control to request the Solicitor to the Council to confirm the existing Bankhouse Plantation, Darvel (Provisional) Tree Preservation Order 2000, subject to the Forestry Commission indicating formally what action it would consider to be good forestry practice in terms of felling/maintenance of trees within the plantation.

**Stephen Chorley**  
**Director of Development Services**

JT/FD/IMB  
 20 July 2000

### LIST OF BACKGROUND PAPERS

1. **Report by Director of Development Services to Development Services Committee, 29 September 1999 – Bankhouse Plantation, Darvel (Provisional) Tree Preservation Order 1999.**
2. **Bankhouse Plantation, Darvel (Provisional) Tree Preservation Order 2000.**

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**AGENDA**