

EAST AYRSHIRE COUNCIL

DEVELOPMENT SERVICES COMMITTEE: 19 DECEMBER 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 the current position regarding the existing and potential future management of the Bankhouse Plantation, Darvel, and to recommend that the existing Bankhouse Plantation, Darvel (Provisional) Tree Preservation Order 2000 be confirmed.

2. BACKGROUND

2.1 A report on the Bankhouse Plantation, Darvel was made to the Development Services Committee on 01 August 2000. This report advised that, despite a further series of attempts by the Planning and Building Control Division to engage the owners of the plantation, James Jones and Sons Ltd in discussions on their possibly entering into a Management Agreement for the Bankhouse Plantation with the Council, no response had yet been received from the owners. Because of this there was no basis for further discussions with the Forestry Commission on preparation of a potential Management Plan for Bankhouse Plantation.

2.2 The Committee authorised the Head of Planning and Building Control to request the Solicitor to the Council to confirm the existing Bankhouse Plantation, Darvel 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.

2.3 The Forestry Commission subsequently informally indicated it would not be able to give an opinion on what would be good forestry practice in advance of making a (Provisional) Tree Preservation Order. The Forestry Commission regarded that such an opinion could prejudice any decision the Council might wish to make regarding any such future proposals.

2.4 In view of this a further attempt has been made by the Planning and Building Control Division to establish a Management Agreement with James Jones and Sons Ltd in respect of the plantation but without success.

3. CURRENT SITUATION

3.1 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.

3.2 It should be borne in mind that even any reduced felling requirements of the Forestry Commission or potential Management Agreement made between the owners, or their agents, and the Forestry Commission, might not necessarily satisfy the Council, or indeed the local community, 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.

3.3 The existing Bankhouse Plantation, Darvel (Provisional) Tree Preservation Order 2000 expires on 08 February 2001.

4. PLANNING IMPLICATIONS

4.1 Policy ENV1(5) of the East Ayrshire Local Plan as finalised 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, and this would include Bankhouse Plantation.

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 cause 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 subject to conditions) where it is certified that the refusal (or grant of consent 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 3.2 above only apply if the Council acts outwith Forestry Commission advice. 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 it has not been possible for a Management Agreement for the woodland to be reached between the Council and James Jones and Sons Ltd 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 is unlikely to 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. In doing so it has to be recognised that the Council will seek to avoid compensation in dealing with any subsequent application to fell.

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, and that the contents of this report are taken into account in determining any subsequent application to fell, top or lop under the Tree Preservation Order.

**Stephen Chorley
Director of Development**

29 November 2000
(JT/MMM)

LIST OF BACKGROUND PAPERS

1. Report by Director of Development Services to Development Services Committee, 01 August 2000 – Bankhouse Plantation, Darvel (Provisional) Tree Preservation Order 2000.
2. Bankhouse Plantation, Darvel (Provisional) Tree Preservation Order 2000.

Anyone wishing to inspect the above papers please contact Julian Thorp on 01563 576789.

Implementation Officer: Karl Doroszenko

AGENDA