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## Appeal Decision

Hearing Held on 31 January 2023

Site visit made on 31 January 2023

**by Andrew Smith BA (Hons) MA MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 28 March 2023**

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**Appeal Ref: APP/TRN/C3430/7716**

**Land at 20 Pineways, Wordsley, Stourbridge DY8 5JH**

- The appeal is made under regulation 18 of the Town and Country Planning (Tree Preservation) (England) Regulations 2012 against a tree replacement notice (TRN).
  - The appeal is made by Mr and Mrs N Hill against the issuing of the notice by South Staffordshire Council.
  - The Council's reference is TPO 40/1982.
  - The notice was issued on 6 November 2019.
  - The requirements of the notice include to plant 115 trees of mixed species and size.
  - The period of compliance with the notice is by 30 March 2020.
  - The appeal is proceeding on grounds set out in section 208(1)(a), (aa), (b), (c) and (d) of the Town and Country Planning Act 1990.
  - The relevant Tree Preservation Order (TPO) is Tree Preservation Order No. 40 (1982) Friars Gorse, Wordsley, which was confirmed on 12 January 1983.
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### Decision

1. The appeal is allowed in part and I direct that the TRN issued on 6 November 2019 relating to Land at 20 Pineways, Wordsley, Stourbridge DY8 5JH be varied by deleting the initial part of Section 4 (up to and including the tabulated planting schedule) and inserting the amended text and schedule that appears at the end of this decision. I further direct that, in the fifth paragraph of Section 4, the text "shall be supported using the 2 stake with cross bar and tie method whilst the" is deleted and replaced with the text "and". I also direct that the date on which the TRN takes effect shall be the date of this decision and that the time for compliance shall be no later than 30 March 2024.

### Main Issues

2. On the basis of the evidence and the grounds on which the appeal has been lodged, I consider that the main issues are:
  - Whether or not a duty to plant applies or should be dispensed with, having particular regard to the requirements of the Town and Country Planning Act 1990 (the Act) and the appellants' responsibilities;
  - Whether or not planting in broad accordance with the requirements of the TRN is required in the interests of amenity;
  - Whether or not the requirements of the TRN are reasonable, having particular regard to the schedule of planting specified and the period of time given to plant;

- Whether or not planting in accordance with the requirements of the TRN would be contrary to good forestry practice; and
- Whether or not the place on which planting is required is suitable for that purpose.

## **Reasons**

### *Whether or not a duty to plant applies*

3. The relevant TPO covers a woodland known as Friars Gorse as well as other adjacent areas of woodland. Friars Gorse covers a considerable area to the west of Wordsley and is comprised of a diverse mix of broadleaved tree species. The purpose of the TPO is to safeguard each protected woodland as a whole, an objective which is dependent upon regeneration or new planting. All surviving trees and saplings of whatever size within the identified area of Friars Gorse are protected, which includes those planted or growing naturally after the TPO was made.
4. The land that is the subject of the TRN (the land) comprises part of the protected woodland known as Friars Gorse. However, it is presently clear of trees and takes the appearance of grassed private garden land. It was confirmed at the hearing that the past unauthorised removal of trees from the land led to a prosecution and a fine being paid by the appellants.
5. Various photographs of the land have been submitted that assist to some degree in illustrating its former appearance at different points in time. Some of these photographs, I understand, were taken soon after the appellants took ownership and thus prior to any works to remove trees taking place, whilst others were taken more recently. It is the appellants' position that the site had a scrubland appearance in advance of any works taking place. Nevertheless, even though there is no clear evidence before me to illustrate that any individual tree of large size was removed, it is apparent that a mix of broadleaved species that still constituted woodland was in place across the land before unauthorised works took place. No convincing evidence to the contrary has been provided.
6. Reference was made at the hearing to other alleged instances along the eastern edge of Friars Gorse where land has been consumed into private gardens. Even should this be the case, such circumstances, which could merit separate investigations by the Council, would not justify a duty to replant being dispensed with. Moreover, it is my duty to focus upon the individual merits of the particular case before me whilst recognising that the woodland in question is safeguarded as a whole.
7. A Personal Search Report was submitted at the hearing, which indicates that the appellants were unaware of the woodland's protected designation when they purchased the appeal property. I have no reason to doubt this to be the case. Nonetheless, it remains that protected trees were removed from and not replaced upon the land. The Act permits the serving of a TRN in this situation.
8. For the above reasons, having particular regard to the requirements of Sections 206 and 207 of the Act and the appellants' associated responsibilities, a duty to plant applies and should not be dispensed with.

*The interests of amenity*

9. The land is visible, at least in part, from along the full length of Pineways and its junction with Balmoral Road. When formerly planted with trees, the land would have made a valuable contribution to the significant amenity value offered by Friars Gorse to the local area. This is despite any other incursion(s) into the protected woodland that may or may not have occurred elsewhere in the general locality. Moreover, the land, which sits adjacent to neighbouring wooded areas/features, holds the potential to once again make a valuable contribution to the amenity of the area.
10. Whilst the appellants' grounds of appeal suggest that recent planning decisions related to adjacent land may have rendered any planting scheme obsolete, this position has not been suitably substantiated. For example, it has not been clearly demonstrated how any nearby major housing development would compromise the amenity function presently performed by Friars Gorse. To the contrary, future development to its fringes would be likely to accentuate the woodland's importance to the visual amenity of the area.
11. For the above reasons, planting in broad accordance with the requirements of the TRN is required in the interests of amenity.

*The requirements of the TRN*

12. It is the appellants' stance that the planting schedule set out within the TRN is not representative of a like-for-like scheme when compared to what was removed. Indeed, it was suggested at the hearing that the trees required to be planted would be larger than those that were previously there. However, even should such circumstances apply to the larger trees listed in the planting schedule, it is inevitable that past works to clear the site involved a considerable loss of established root stock and coppice stools capable of rapid growth and regeneration. It was not convincingly argued otherwise at the hearing. This is an important factor to be considered when assessing the reasonableness of the TRN's requirements.
13. The Council has set out that the planting schedule was formulated in accordance with Forestry Commission guidance related to the re-stocking of woodland and that the makeup of an adjacent area of woodland was also taken account of in its calculations. I have no reason to doubt the suitability or representativeness of any of the broadleaved species identified within the schedule. Nevertheless, there was acknowledgement from the Council at the hearing that heavy standard container grown trees (12-14cm girth) may not be most appropriate. Indeed, smaller sized trees (8-10cm or 10-12cm) would be more likely to successfully establish and would offer a not dissimilar level of amenity.
14. A potential willingness of the appellants to plant up to 30 trees of mixed broadleaved species (the appellants' planting schedule) was stated at the hearing. However, this is a significantly lower figure when compared to the calculated number of 115 required by the TRN. Moreover, 30 trees, even if regularly spaced, could not reasonably be anticipated to reinstate a woodland character to the land. Instead, denser tree coverage is required.
15. Having inspected the specific makeup of the land and the effect of a recent extension to 20 Pineways and associated works upon the realistic availability

for planting of parts of the land's eastern edge, it would, to my mind, be reasonable and practical to reduce slightly the total number of trees required to 100. This would offer suitable assurances that all specimens could be planted with satisfactory separation and without prejudice to the aim of reinstating a properly functioning area of woodland across the land.

16. A reasonable timeframe for planting was discussed at the hearing. It was acknowledged by the Council that it would be unduly onerous to expect the appellants to replant in this current planting season (November to March). To my mind, full compliance by the end of the next planting season is a reasonable and fair expectation.
17. For the above reasons, the requirements of the TRN are not reasonable only in so far as they relate to the total number of trees to be planted and the sizes of container grown stock. I shall adjust the text and schedule to the initial part of Section 4 of the TRN accordingly, reducing the numbers of individual species not included in the appellants' planting schedule. Further, at the request of the Council, and as there is no prejudice to the appellants in me doing so, I shall adjust the specification of the support mechanism for larger trees. I shall also adjust the time period for compliance as set out in paragraph immediately above.

#### *Good forestry practice*

18. Although indicated as a ground of appeal on the appeal form, no supporting evidence has been put before me to demonstrate that the requirements of the TRN would be contrary to good forestry practice.

#### *Suitability of site for planting*

19. Whilst the land sits alongside trees of height, it has not been clearly substantiated how such circumstances would prejudice the establishment of new planting on the land. Indeed, it is normal for specimens of differing heights and ages to successfully co-exist in a woodland environment.
20. Thus, in the absence of convincing evidence to the contrary and notwithstanding its sloped topography, the land is suitable for planting in the most part. Only selected easternmost parts of the land, where influenced by recent developments that have included the erection of a brick retaining wall, can be fairly considered unsuitable. This is reflected in the amendments I have made to the planting schedule.

### **Conclusion**

21. For the reasons set out above, and having regard to all other matters raised, I conclude that the appeal should be allowed in part. I shall vary the TRN accordingly. These variations are formally set out under the 'Decision' heading above and via the amended text and planting schedule set out below. The TRN, as served by the Council, remains otherwise intact.

*Andrew Smith*

INSPECTOR

**Amended text and schedule to the initial part of Section 4 of the TRN**

You are required to replant trees over the area of land edged red on the attached plan. The trees to be planted shall be randomly planted in staggered rows at 3 metre spacing between trees and 3 metres between rows.

The number of trees required to be planted is 100. The trees shall be of the following species, numbers and size ranges:

No.	Species. Common names.	Size range
*10	Sweet Chestnut	8-12cm girth, container grown
20	Sweet Chestnut	1.2-1.8m tall, bare root
*10	Oak	8-12cm girth, container grown
20	Oak	1.2-1.8m tall, bare root
*5	Beech	8-12cm girth, container grown
10	Beech	1.2-1.8m tall, bare root
10	Silver Birch	1.2-1.8m tall, bare root
5	Rowan	1.2-1.8m tall, bare root
5	Hazel	1.2-1.8m tall, bare root
5	Hawthorn	1.2-1.8m tall, bare root

