

**From:** Alastair McKie [REDACTED]  
**Sent:** 11 October 2022 16:00  
**To:** Local Review Body  
**Subject:** 22/00149/REVREF-1 Avenue Villas Edinburgh EH4 2HU  
**Attachments:** Answer to Appeal Final 11.10.22(31529485.1).pdf; Paper Apart Final(31530086.1).pdf

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

Dear Madam,

**Notice of Review 22/00149/REVREF by Mr Hancox  
Planning Application 22/02322/FUL ("Planning Application")  
Katrina Lumsdaine and Bruce Farquhar, 2 Avenue Villas, Edinburgh ("Clients")  
Application for a Review to the City of Edinburgh Council's Local Review Body**

I refer to your Notice dated 29 September 2022.

Please find attached a response (Answer to Appeal) on behalf of my Clients in relation to this Application for a Review together with a Paper Apart containing relevant documents including an Expert Report on the trees from Julian A Morris B Sc, Dip Surv, Cert Pub Sect Man, Tech Cert Arb, PTI .

Kindly acknowledge safe receipt and please advise of the next steps.

**Alastair McKie**

**Partner**

Accredited by the Law Society of Scotland as a specialist in Planning Law

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By email : localreviewbody@edinburgh.gov.uk

Gina Bellhouse  
Planning Advisor  
Local Review Body  
City of Edinburgh Council

If calling, please ask for: Alastair McKie  
Direct Dial: 0131 625 7257  
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Email: 

Your Ref: 22/00149/REVREF  
Date: 11 October 2022

Dear Madam,

**Notice of Review 22/00149/REVREF by Mr Hancox**

**Planning Application 22/02322/FUL (“Planning Application”)  
Katrina Lumsdaine and Bruce Farquhar, 2 Avenue Villas, Edinburgh (“Our Clients”)  
Application for a Review to the City of Edinburgh Council’s Local Review Body**

**Executive Summary**

Our Clients are “interested parties” in terms of the above Application and objected to the Planning Application on a number of planning grounds including in relation to adverse impacts on trees protected by Tree Preservation Order No 157 (“TPO”).

We respectfully consider that the determining issue for the Local Review Body (“LRB”) is whether the proposed development is likely to damage trees protected by the TPO including those 13 trees recently replanted following the Tree Replacement Notice served on the Applicant by the Council. These replanted trees are also subject to the TPO and are statutorily protected. There is overwhelming evidence that the proposed development **will** damage the trees protected by the TPO and no convincing evidence to the contrary has been advanced by the Applicant.

Policy Env 12 is a clear-cut development plan policy which provides that where protected trees are likely to be damaged, the development **will** be refused. Therefore, this Application must be refused and we would respectfully ask that the LRB endorse and uphold the Council Officer’s reason for refusal and refuse planning permission accordingly.

This is the only conclusion consistent with the wider planning policy considerations and is in keeping with the finding that the applicant cannot benefit from his own previous wrongdoing in damaging and felling trees without permission.

## Development Plan Policy Context

Given the importance of the development plan policy to the Application, it is helpful to set out the relevant wording. Policy Env 12 provides that:-

*“Development **will not be permitted** if likely to have a damaging impact on a tree protected by a Tree Preservation Order or on any other tree or woodland worthy of retention unless necessary for good arboricultural reasons. Where such permission is granted, replacement planting of appropriate species and numbers will be required to offset the loss to amenity.”*

The explanatory text for this policy is also relevant in understanding its meaning and true purpose:

*“186 that This policy recognises the important contribution made by trees to character, biodiversity, amenity and green networks. In assessing proposals affecting trees, the Council will consider their value, taking into account current Scottish Government guidance – presently contained in its Policy on Control of Woodland Removal and UK Forest Standard – and their status such as Tree Preservation Order, heritage tree, Ancient Woodland and Millennium Woodland, along with information from tree surveys.*

*187 Where necessary to protect trees, the Council will use its powers to make and enforce Tree Preservation Orders.”*

The terms of this Policy are clear cut. It has been promoted and adopted by the Council as planning authority in recognition of the contribution that the trees make to the character, biodiversity, amenity and green networks. Prior to unauthorised felling, the trees protected by the TPO were making a significant contribution to the character and amenity of the area. In serving the Tree Replacement Notice the Council were seeking to address the damage done by the Applicant through unauthorised tree felling and restore the character and amenity of the area to the standard it was prior to felling.

Policy ENV 12 clearly applies to trees planted under the Tree Replanting Notice and the Council Officer was correct to assess the impacts of the proposed development on these trees as they grow to maturity.

### **Evidence that the Proposed Development is likely to have a damaging impact on a tree or trees protected by the TPO.**

Policy Env 12 requires an application to be refused where it is likely to damage protected trees.

There is clear evidence that the proposed development is likely to have a damaging impact on the protected trees. The evidence is:

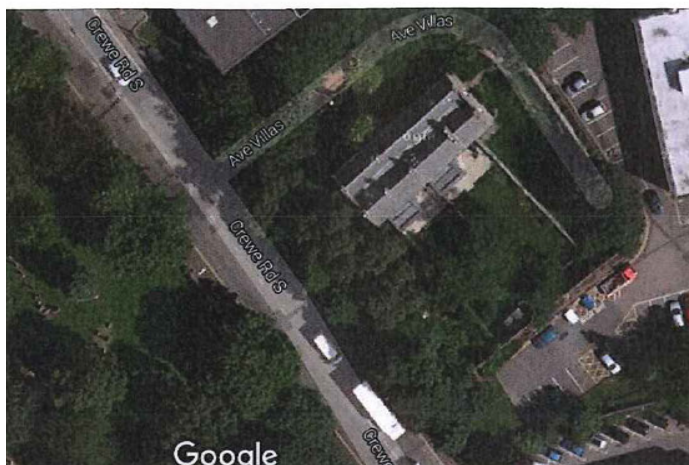
1. Expert Report of Julian Morris of Professional Tree Services<sup>1</sup>

We attach in the paper apart, an expert report by Julian Morris which identifies fundamental flaws in the Applicant's tree Report and concludes that the proposed development will damage the trees protected by the TPO including those trees replanted under the Tree Replanting Notice. We adopt this report in its entirety. We are in full agreement with his conclusion that:

*"In my professional opinion I believe that the Council were fully justified in concluding that the location of the proposed extension would adversely impact on the long-term growth of the replacement trees planted pursuant to the Tree Replacement Notice and would undermine the long-term purpose of the TPO to protect the amenity of the area. In addition, the inadequacies of the tree report mean that the trees have not been correctly assessed or protected."*

2. Common Sense with reference to the image of the woodland when mature.

Below is a picture from Google images taken before the Applicant damaged and felled 13 of the protected trees in the woodland. It also evidences how the site should look again if the trees are allowed to reach maturity.



This clearly evidences that a development of the size proposed cannot sit in the woodland without inevitable damage to the trees protected by the TPO. There is plainly not enough space.

3. The Applicant's own reports to the Council

The Applicant has for many years been applying, unsuccessfully, initially to build a new house and thereafter to build a large extension on the TPO site. In one of the applications referenced in the current application<sup>2</sup>, it was stated by the Applicant's own architect that:

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<sup>1</sup> Dated 10 October 2022

<sup>2</sup> 20/03559/FUL



*“It is acknowledged that most of the recently planted trees will be required to be re-positioned, not only to allow for future growth of the trees above ground but also to mitigate below ground damage to the new extension structure as a result of incremental root and stem growth.”<sup>3</sup>*

Just because the acknowledgement is not repeated in the current application, does not mean that the facts acknowledged are no longer true. This is a candid and fair acknowledgment that **most** of the replanted trees will be damaged both above ground and below ground. Whilst the current application is slightly different in design, the important facts about tree damage and need for growth remain unchanged.

#### 4. The Applicant’s own appeal to the Scottish Ministers

Eleven of the trees subject to the TPO were damaged by the Applicant such that Council required to provide permission to fell them – but specifically required that replacement trees be replanted. When the Applicant failed or refused to replant, he was subject to a Tree Replacement Notice requiring that all 11 trees were replanted, as well as a further 2 trees which he had felled without permission. The Applicant appealed that Tree Replacement Notice to the Scottish Ministers.

The whole basis of that appeal was that the entire site subject to the TPO was too small to accommodate 13 replacement trees without damage to the current listed building. It is absurd now for the Applicant to suggest that the site is large enough to support the 13 trees which were ultimately replanted (some of which required to be replanted by the Council) – as well as the very considerable proposed development.

The Applicant’s own expert arborologist<sup>4</sup> also produced a report stating that BS5837:2012 does “not readily support tree planning on this plot”. They go on to say that:

*“It is unlikely that any tree species that meets the criteria of the NHBC guidance will reach a mature stature that even begins to resemble that afforded by the trees that were removed. Furthermore any new planting are likely to give rise to a similar situation where there is a very real potential for structural damage to the existing adjacent structure leading to requests in the future for tree removal or modification through pruning.”*

It is not tenable now to suggest that these statements of the Applicant’s own expert can be compatible with the conclusion that the large proposed development can be built on the same plot without damage to the protected trees.

#### **The Applicant’s Evidence that the Trees will be Protected**

The Applicant relies on only one piece of evidence that the proposed development will protect the trees subject to the TPO. This is the Hinshellwood report. Yet astonishingly, Hinshellwood expressly states that he was **not aware of the existence of the TPO**. Not knowing of the TPO, unsurprisingly,

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<sup>3</sup> Paragraphs 5.22 and 5.23

<sup>4</sup> Arboretum International report dated 23 February 2016

the report makes no assessment of the impact of the proposed development on all the trees subject to the TPO.

Fundamentally, the tree expert instructed by the Applicant was not made aware that the 13 Trees which were replanted under the Tree Replanting Notice are statutorily protected under the TPO and therefore no assessment has been undertaken.

Little or no weight can therefore be placed on the Hinshellwood report and we invite the LRB to accept the position of the Council Officer and that of Mr Morris both of whom were aware of the TPO and the trees having been replanted under a Tree Replacement Notice – and both of whom concluded that proposed development would be likely to damage those protected trees.

### **Other Planning Policy**

The Applicant in part bases his case on Scottish Planning Policy (“SPP”) and Edinburgh Design Guidance (2020).

The Applicant or his agent appears to have misunderstood SPP and Scottish Ministers’ approach to the policy protection given to important trees. One of the policy principles of SPP states:-

*“Policy Principles*

*“194. The planning system should:*

*“protect and enhance ancient semi-natural woodland as an important and irreplaceable resource, together with other native or long-established woods, hedgerows and individual trees with high nature conservation or landscape value”*

*Edinburgh Design Guidance (2020)-*

*“Woodland 216. Ancient semi-natural woodland is an irreplaceable resource and, along with other woodlands, hedgerows and individual trees, especially veteran trees of high nature conservation and landscape value, should be protected from adverse impacts resulting from development. Tree Preservation Orders can be used to protect individual trees and groups of trees considered important for amenity or their cultural or historic interest.”*

The Application and the proposed development runs counter to this policy and guidance.

Surprisingly the Applicant’s agent refers to this to buttress his arguments in favour of the proposed development. This policy/guidance document adopted by the Council for development management purposes provides particular protection for important trees across many paragraphs. At chapter 3.5 it states

*“Trees and woodlands are important for the quality and character of the landscape, the townscape, biodiversity, cultural heritage, ecosystem services and our sense of well-being. Protection of trees and woodland within new development can give a sense of maturity and raise the overall quality of the setting of buildings whilst contributing to green/blue networks. Where trees are damaged and then decline or where inappropriate design leads to conflict, these positive benefits are lost.”*

Despite the design merits that the Applicant and his agent apparently see in the proposed development it is contrary to Edinburgh Design Guidance (2020) as it does not protect the trees subject to the TPO.

**Should the Applicant now benefit from having previously damaged and felled protected trees without permission?**

The Applicant has previously:-

- Damaged trees subject to the TPO which resulted in eleven previously healthy, mature trees requiring felling and felled two further healthy mature trees which were subject to the TPO without any authority. All the felled trees were in the way of the area on which he wished to build either a new house or a large extension.
- Failed to replant felled trees, even when served with a Tree Replacement Notice compelling that he do so.
- Appealed the Tree Replacement Notice to the Scottish Ministers. The appointed Reporter rejected his appeal;
- Continued to fail to replant trees, resulting in the Council having to arrange directly the required replanting on the TPO site;
- Disingenuously instructed a tree expert to issue a report for the purpose of this Planning Application (being one of a number of different experts over a series of withdrawn or refused applications) without notifying the expert that a TPO was in existence, nor highlighting that the 13 trees had been replanted subject to the Tree Replacement Notice.
- Failed to lodge the tree expert report in the original planning application prior to the last date for Oppositions to the Application – meaning that the opposing parties (including our Clients) had no opportunity to comment on it and indeed the first sight our Clients had of this document was when the Application for a Review was notified.

For the avoidance of doubt, if a tree protected by a TPO and is felled, then a replacement tree is planted in its stead pursuant to a Tree Replacement Notice, the replacement tree is afforded the exact same protection as the original tree. Otherwise TPOs would serve no purpose at all. Thus, in this case, the replacement trees must and do enjoy the exact same protection as the trees which they replaced.

The Applicant has acted in a manner which shows a contempt for the protections which a TPO is intended to provide. Had he not carried out these unlawful acts, the site would still be covered in the mature healthy trees seen in the Google image above. There would be no argument that a development of the size proposed could be built there whilst respecting the TPO. The applicant should not be permitted to rely on his own unlawful damage to and felling of protected trees and duplicitous conduct to claim now that the trees are young and therefore not worthy of protection.

If the LRB were to endorse this approach, it would be tantamount to accepting that any TPO can be circumvented simply by unlawfully damaging and felling trees, then instructing an expert not to consider the trees or the TPO to justify building on a protected site.

## **Conclusion**

We therefore respectfully invite the LRB to refuse the Application for the Review and refuse planning permission as the planning application is contrary to Local Development Plan Policy ENV 12 Trees.

[REDACTED]

[REDACTED]

[REDACTED] McKie

Accredited Specialist in Planning Law

Legal Associate of the Royal Town Planning Institute

Partner

Anderson Strathern

This is the Paper Apart referred to in the letter dated 11 October 2022 issued by Anderson Strathern.

## **Index**

1. Expert Report of Julian Morris of Professional Tree Services dated 10 October 2022
2. Policy Env 12
3. Tree Preservation Order No 157

**1.**

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1 Rutland Court  
Edinburgh  
EH3 8EY



By email ([Alastair.McKie@andersonstrathern.co.uk](mailto:Alastair.McKie@andersonstrathern.co.uk)) and post

10<sup>th</sup> October 2022



Dear Sir, and to whom it may concern

TREES AT AVENUE VILLAS, EDINBURGH



I refer to your request for observations on the likely effect of proposed development of an extension to the property at 1 Avenue Villas on trees within the curtilage of the property.

I set out my qualifications and experience in an undernote to this letter.



The proposed development would comprise a basement and ground floor wrap-around at the south west corner of the building. It was the subject of detailed planning application 22/02322/FUL which I am advised has been refused and is subject to appeal to the City of Edinburgh Council's Local Review Body. The Council's reason for refusal given was that *"The proposal is contrary to the [City of Edinburgh Council] Local Development Plan Policy Env 12 in respect of Trees, as the location of the extension would impact on the long-term growth of replacement trees."*



In my professional opinion I believe that the Council were fully justified in concluding that the location of the proposed extension would adversely impact on the long-term growth of the replacement trees planted pursuant to the Tree Replacement Notice and would undermine the long-term purpose of the TPO to protect the amenity of the area. In addition, the inadequacies of the tree report mean that the trees have not been correctly assessed or protected.



### The appeal



The Statement of Appeal by Cundall for the applicant contends that *"... the Reason for Refusal is unreasonable, not substantiated by planning policy and that the application already allows for full tree protection on the site."* It adds later that *"The issue of difference therefore revolves around the protection of a group of very young TPO Trees and whether they are adequately protected by the proposed works."* The agent supposes that an



arboricultural report (“the Hinshelwood report”) submitted with the application demonstrates no adverse impact on the trees by the development.

## **The context**

The site includes relatively young trees planted recently as replacements for protected (Tree Preservation Order) trees which I am told had been damaged by the site owner and had then been removed with the permission of the Council on condition that replacements were provided. It follows that the replacement trees are now protected by the Order.

Also as I understand it, the site owner then appealed against the replanting condition on the basis that “*the species and size of trees cannot be delivered due to the significant engineering costs involved to protect both the future trees and existing structures...*” The application was refused.

Because the site owner would not plant the replacement trees, the Council served a Tree Replacement Notice, against which the owner appealed. In dismissing the appeal the Reporter appointed by the Scottish Ministers concluded that “*there is adequate space to accommodate the number of trees specified on the enforcement notice and the choice of species is appropriate to remedy the harm to amenity.*”

I have visited the location in early October 2022 and (without permission to go on the site) I have observed the existing trees from surrounding positions.

My key sources of information are the Tree Preservation Order (2006) (“TPO”) covering the garden area, the committee report gaining approval to confirm the Order, a Design Statement by David Blaikie Architects supporting the application and a tree survey report (the Hinshelwood report) in May 2022 by Hinshelwood Arboricultural Consultants. I have also seen Google Streetview and aerial pictures of the site before and after the removal of trees several years ago. Finally I have a copy of the Report of Handling by the Council officials which recommended refusal of the planning application.

## **The trees**

The TPO lists one individual Sycamore (which is far from the development proposal and is not affected) and a group of 17 birch, 1 beech, 1 sycamore, 1 lime and 1 laburnum. The plan annexed to the TPO shows the group covering all of the west garden area. Aerial photographs and Streetview photographs from several years ago show continuous canopy cover across the whole west garden area.

Of these, the north half have subsequently been removed. Following a Tree Replacement Notice by the Council these have been replaced a few years ago. Although exact sizes and positions are not known, the position of the trees is fairly represented in the planning application plans.



## **The Hinshelwood report**

The Hinshelwood report states variously that it is a record of the trees present and the constraints they would present to any development, and then that it is an Arboricultural Impact Assessment assessing the effect of the specific design on the trees and recommending protection measures. All these aspects are clearly defined in the relevant British Standard BS5837 which is considered industry best practice and is used throughout the UK to assess the tree aspects of planning application.

The report records only 6 trees that needed to be assessed in terms of proximity to the proposed development. It specifically says that no check was done for Conservation Area or TPO designations. It suggests that it is essential that the Council be contacted about any development-associated tree works not being approved by a planning permission.

I think it reasonable to say that had the consultant known of the TPO he would have made mention of the potential implications, and this might have resulted in the trees being properly recorded, assessed and protected. However, as it stands they have not been. Even so, to comply with BS5837 the survey should have recorded and assessed all trees on the application site and on surrounding land. The Council's current policy is that all trees on and within 15 metres of any planning application site should be recorded and assessed.

The following aspects of the Hinshelwood report are noted –

- a. No TPO check was undertaken
- b. There is no record of the smaller TPO'd replacement trees. Accordingly no protection (against, in particular, damage from construction activity) for these is mentioned.
- c. Several birch are recorded which by virtue of size and age class are presumably some of the originally TPO'd trees.
- d. Of these, 2 are close to the development, numbered 5755 and 5756.
- e. Their mapping position is based on a topographic survey provided by the architect, and I have no reason to suppose that this is wrong.
- f. The two trees are birch and are recorded as Mature and having stem diameters of 280-300mm and heights of 10m. No defects are recorded.
- g. They have been categorised as Category C, with a life expectancy of "10+ years".
- h. Unfortunately "10+" is not a classification that is recognised in BS5837, and so it is not known what life expectancy was assessed. The available choices are <10, 10-20, 20-40 or 40+ years.
- i. Based on my recent observations, in my opinion these trees have an Estimated Remaining Contribution of 20-40 years and a categorisation of Category B. However, as the categorisation as C has not been used to propose or justify removal of the trees, this may be of little consequence.

- j. The development would extend into the root protection area of one tree by a distance of about 0.6m, bringing the building within 0.5m of the current crown spread. No allowance has been made for inevitable construction access around the proposed building for foundations, vehicles, scaffolding etc.
- k. The report estimates an encroachment into the Root Protection Area of 8%. The report erroneously states that BS5837 allows up to 20% encroachment, it certainly does not.
- l. BS5837 is clear that an Arboricultural Impact Assessment should include a Tree Protection Plan clearly showing Construction Exclusion Zones.
- m. The report states that it includes a Tree Protection Plan showing Construction Exclusion Zones, but I see no such plan. If such a plan exists, it presumably would offset the Construction Exclusion Zone a practical distance from the face of the proposed building, meaning further encroachment into the Root protection Areas.

## **The Design Statement**

This mentions trees only insofar as mentioning that the building will be cantilevered over tree roots. However, since this would deprive the roots of any further rainfall, any roots under the cantilever would die. The effect of the development must therefore be assessed with regard to the building perimeter, plus any practical working width and all access routes and contractor's working areas.

## **The replacement trees**

I do not have any information as to their size, but the Council and the appellant's agent noted them to be birch and rowan. The various plans indicate the position of some small trees within the garden and, based on my recent visit, these are the replacement trees.

Various sources exist as to mature tree sizes. For example Hillier Trees, one of the UK's leading tree suppliers, has published figures for mature height of many tree species. Birch height will be 15 to 20m, Rowan will be 10 to 15m.

Spon's guide 1995 (Gruffydd) indicates appropriate spacings of 7 metres, which accords with my own experience of mature birch and rowan spreads of c. 5-6 metres radius.

I have no definitive list of mature stem diameters, but I regularly see mature Birch and Rowan at diameters of 400mm.

## **Future growth**

To assess the future rooting requirements of the trees, an important distinction needs to be made between Root Protection Areas (defined as "the minimum area around a tree deemed to contain sufficient roots and rooting volume to maintain the tree's viability") and the larger rooting area which also contains smaller roots gathering water and nutrients for future growth. The Root Protection Area is based on current size, but to assess the future

requirements of a tree to allow it to reach viable maturity it is appropriate to use not just the forecast RPA of the mature stem size but also the full mature rooting area.

In *Trees, Their Natural History* (Thomas 2009) it is stated that "In temperate trees the total spread away from the trunk is usually 2-3 times the radius of the canopy". In *Tree Roots in the Built Environment* (Roberts et al 2006) it is said that "the horizontal extent of tree roots substantially exceeds the perimeter or 'dripline' of the crown."

Taking all these factors into account and applying the assumed mature size dimensions, a freestanding replacement tree can be expected to require a rooting area radius of around 12 metres each. The equivalent circle area would be 450m<sup>2</sup> per tree.

Growing in fairly close proximity they can expect through natural competition to grow to their full height potential. In most cases their crowns can be expected to coalesce, as had been the case with the trees on site prior to 2016. It appears inevitable that the rooting areas will also coalesce and the trees will compete for underground resources. The core Root Protection Area and individual crown area of each tree of 80m<sup>2</sup> is required for viable mature size.

It can be foreseen that at least the 3 nearest trees will extend their core Root Protection Area and much larger rooting area eastwards into the area where the extension is proposed. It can also be expected that the crowns of those trees will occupy the airspace where the extension is proposed.

If the extension was built soon, the immediate impact on the trees would be negligible (subject to adequate physical protection during construction), but within a decade the roots of the trees would reach the extension area. From that time forward the roots would be deflected into the rooting area of other trees. This would reduce the rate of growth of the trees because the trees would be competing for less resources.

The trees would also by this stage be touching the buildings with their branches, and there would be considerable pressure from occupants (for daylighting and views) to reduce or remove them.

## **Conclusions**

Based on the assumptions I have had to make, I find that the Hinshelwood report does not show any tree protection and relies on an erroneous understanding of the British Standard to sanction a significant encroachment into the root protection area of at least one TPOd trees. Allowing for working widths around the proposed buildings, the encroachment would in reality be much greater.

Through the exclusion of rainwater, the architect's proposal to cantilever the building to protect roots will not have the desired effect. It is also foreseeable that the tree crowns will grow to be close to or touching the building, leading to pressure for removal or reduction.

Despite the Cundall statement, no protection is proposed for the TPOd replacement trees.

Through competition for growing resources in the reduced garden area, the extension will inevitably restrict the growth of the TPOd replacement trees and create significant pressure

for their removal or reduction. Both will result in some postponement, reduction or loss of tree amenity for the area. Therefore, to a material degree, the Council's assertion that the purposes of the TPO will be frustrated by allowing the development is in my opinion true.

The materiality of that 'degree' might be equated roughly to the proportion of tree growth resources that would be lost to the footprint of the proposed building (c.70m<sup>2</sup>), relative to the area of the west garden area available for growth of the replacement trees (c.320m<sup>2</sup>). The loss would then be of the order of 21%.

This would manifest itself in one more of the following (i) tree losses due to inadequate growth resources (ii) smaller trees (iii) slower establishment (iv) lower quality trees and tree amenity (v) shorter life expectancy.

The agent's assertions that the trees will be adequately protected is incorrect, since the impact on some trees has been incorrectly assessed and on others not assessed at all. The appellant's argument that the replacement trees will survive the development cannot be equated to them being unaffected in the longer term.

In my professional opinion I believe that the Council were fully justified in concluding that the location of the proposed extension would adversely impact on the long-term growth of the replacement trees planted pursuant to the Tree Replacement Notice and would undermine the long-term purpose of the TPO to protect the amenity of the area. In addition, the inadequacies of the tree report mean that the trees have not been correctly assessed or protected.

Yours faithfully

A black rectangular redaction box covers the signature area. There are faint blue scribbles above and to the left of the box.

Julian Morris

#### Undernote – qualifications and experience

I am a professionally qualified arboriculturist holding a Bachelor of Science Degree, the Arboricultural Association Technicians Certificate, the LANTRA Professional Tree Inspectors Certificate, current Quantified Tree Risk Assessment (QTRA) registration, Certificate of Public Sector Administration and a Diploma in Surveying. I am also qualified and experienced tree surgeon with a good working knowledge of trees, tree work and the procedures and costs involved therein.

In addition I have developed considerable expertise and experience in the assessment of the daylighting implications of trees and hedges on ground and buildings in accordance with BS8206-2 and BS EN 13037, including the application of BRE Site Layout Planning for Daylight and Sunlight to situations, particularly development sites and High Hedge (Scotland) Act cases and appeals.

Julian A Morris B Sc, Dip Surv, Cert Pub Sect Man, Tech Cert Arb, PTI  
Professional Tree Services

A wide range of recent and current clients include for several Scottish local authorities and Housing Associations, public bodies, national and local housebuilders, architects, planning consultants, developers, churches and private individuals. I undertake about 100 surveys and reports every year for public and private clients on trees in relation to development. As a former land surveyor and chartered surveyor (MRICS) I have a wealth of experience in land and building surveys, property law, valuation of properties including trees, and practical and theoretical aspects of property development work. Publications include on tree daylighting and tree valuation. I act as an expert and forensic witness.

As an Associate member of the Institute of Chartered Foresters I am bound by its Code of Conduct. I am a member of the Arboricultural Association I am bound by its Code of Professional Conduct.

### **RECENT MAIN CLIENT LIST (2019-2022)**

Avant homes, Barratt Homes, Bellway, Balfour Beatty Homes, Westpoint, Miller (East), Miller (West), Dawn Homes, Persimmon Homes, South Lanarkshire Council, Falkirk Council, City of Edinburgh Council, Dundee City Council, Loch Lomond and Trossachs National Park, Argyll and Bute Council, Perth & Kinross Council, Southside Housing Association, McTaggart Construction, Abbey Construction, Advance Construction, Harrison Developments, Geddes Consulting, Gavia Environmental, Brindley Associates, Alan Motion Tree Consulting, Langton Tree Specialists, Donald Rodger Associates, EMA Architects, Smith Scott Mullan, DTA Architects, Fouin and Bell, Scottish Wildlife Trust, Polmont Green Action Trust, Crown Estates, Drummond Estates, Woolgar Hunter, Scottish Enterprise, West Lothian Council, Barton Willmore, Ross & Liddell, James Gibb, Lorimer & Stevenson, Robertson Living, Swan Group, Vanguard Health Care, Bidwells, Rankin Fraser, Story Contracting, Wood Leisure, ECDA Architects, Thomas & Adamson, Vanguard Health Care, C-URB Property Maintenance, Edinburgh Construction, Link Housing Association, Taylor Wimpey, Stantec, Kier Construction, Renfrewshire Council, Ironside Farrar

2.

## **Part Apart**

### ***“Protection of Trees Policy Env 12 - Trees***

*Development will not be permitted if likely to have a damaging impact on a tree or trees protected by a Tree Preservation Order or other trees worthy of retention on or around a proposed development site, unless necessary for good arboricultural reasons. Where such consent is granted, replacement planting will be required to offset the loss to amenity.*

*The Council has placed Tree Preservation Orders on a large number of trees where they make a positive contribution to the character of the urban or rural environment, particularly where trees are threatened by development proposals.”*

**3.**





## APPLICATION FOR CONSENT

3. An application for consent made to the planning authority under Article 2 of this Order shall be in writing and shall specify -

- (i) the tree or trees to which the application relates;
- (ii) the reasons for making the application;
- (iii) the operations for the carrying out of which consent is required;

and shall where necessary for the identification of such tree or trees be accompanied by a map or plan of a size or on a scale sufficient for the purpose.

4. If it is desired to fell any of the trees included in this Order, whether included as trees, groups of trees or woodlands, and the trees are trees for the felling of which a licence is required under the Forestry Act 1967, application should be made - not to the planning authority for consent under this Order but to the Conservator of Forests for a licence under Section 15 (5) of that Act.

5. (1) Where an application for consent is made to the planning authority under this Order the planning authority may grant such consent either unconditionally, or subject to such conditions (including conditions requiring the replacement of any tree by one or more trees on the site or in the immediate vicinity thereof) as the planning authority may think fit, or may refuse consent: Provided that where the application relates to any woodland specified in the First Schedule to this Order the planning authority shall grant consent so far as it accords with the principles of good forestry, except where, in the opinion of the planning authority, it is necessary in the interests of amenity to maintain the special character of the woodland or the woodland character of the area and shall not impose conditions on such consent requiring replacement or replanting.

- (2) The authority shall keep a register of all applications for consent under this Order containing information as to the nature of such applications, the decisions of the planning authority thereon, any compensation awarded in consequence of such decisions and any directions as to replanting of woodlands; and every such register shall be available for inspection by the public at all reasonable hours.
6. Where the planning authority refuse consent under this Order or grant such consent subject to conditions they may when refusing or granting consent certify in respect of any trees for which they are so refusing or granting consent that they are satisfied:
  - (a) that the refusal or condition is in the interests of good forestry; or
  - (b) in the case of trees other than trees comprised in woodlands, that the trees have an outstanding or special amenity value.
7.
  - (1) Where consent is granted under this Order to fell any part of a woodland other than consent for silvicultural thinning then unless
    - (a) such consent is granted for the purpose of enabling development to be carried out in accordance with permission to develop land under Part III of the Act, or
    - (b) the planning authority, with the approval of Scottish Ministers, dispense with replanting the authority shall 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 he shall replant such land and where a direction is given and the part is felled the owner shall, subject to the provisions of this Order and Section 166 of the Act, replant the said land in accordance with the direction.
  - (2) Any direction given under paragraph (1) of this Article may include requirements as to



- (a) species;
  - (b) number of trees per acre;
  - (c) the erection and maintenance of fencing necessary for the protection of the replanting;
  - (d) the preparation of ground, draining, removal of brushwood, lop and top; and
  - (e) protective measures against fire;
- (3) If any question arises between the planning authority and the said owner of the land as to whether any such direction is reasonable having regard to the particular circumstances of the case or to any other material considerations, the question shall, on the application of either party, be determined by Scottish Ministers, whose decision shall be final.

#### ADAPTATION AND MODIFICATION OF ACT.

8. The provisions set out in the Third Schedule to this Order, being provisions of the Act adapted and modified for the purposes of this Order, shall apply in relation hereto.

#### COMPENSATION

9. Subject to the provisions of this Order, any person who has suffered loss or damage in consequence of any refusal (including revocation or modification) of consent under this Order or of any grant of any such consent subject to conditions, shall, if he makes a claim on the planning authority within the time and in the manner prescribed by this Order, be entitled to recover from the planning authority compensation in respect of such loss or damage.

Provided that no compensation shall be payable in respect of loss or damage suffered by reason of such refusal or grant of consent in the case of any tree or trees the subject of a certificate in accordance with Article 6 of this Order.

10. In assessing compensation payable under the last preceding paragraph account shall be taken of:-
  - (a) Any compensation or contribution which has been paid whether to the claimant or any other person in respect of the same trees or woodland areas under the terms of this or any other Tree Preservation Order under Section 160 of the Act, or under the terms of any Interim Preservation Order made under Section 8 of the Town and Country Planning (Interim Development) (Scotland) Act 1943 or any compensation which has been paid or which could have been claimed under any provision relating to the preservation of trees or protection of woodland contained in an operative scheme under the Town and Country Planning (Scotland) Act 1932; and
  - (b) Any injurious affection to any land of the owner which would result from the felling of the trees or woodlands the subject of the claim.
11.
  - (1) 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.
  - (2) The time within which any such claim shall be made as aforesaid shall be a period of six months from the date of the decision of the planning authority or of Scottish Ministers as the case may be, or 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.
12. Any question of disputed compensation shall be determined in accordance with the provisions of Section 165(2) and (3) of the Act.

OFFENCES AND PENALTIES, ETC.

13. Under the provisions of Section 171 of the Act any person who in contravention of this Order cuts down, uproots or wilfully destroys a tree, or wilfully damages, tops or lops a tree in such a manner as to be likely to destroy it, shall be guilty of an offence and liable on summary conviction to a fine not exceeding £20,000; or on conviction on indictment to an unlimited fine. Other contraventions of this Order carry with them on summary conviction a fine not exceeding level 4 on the standard scale.
14. (1) If a tree other than one which is part of a woodland is removed, uprooted or destroyed in contravention of this Order, or is removed, uprooted or destroyed or dies at a time when its felling is authorised only by virtue of the provisions of Section 160 (6) (a) of the Act relating to uprooting or felling where urgently necessary in the interests of safety, it shall be the duty of the owner of the land, unless on his application the planning authority dispense with this requirement, to plant another tree of appropriate size and species at the same place as soon as he reasonably can.
- (2) In relation to any tree planted pursuant to paragraph (1) above, this Order shall apply as it applied to the original tree.
- (3) If it appears to the planning authority that the provision in paragraph (1) above has not been complied with in the case of any tree or trees, they may, at any time within two years from the date on which failure to comply with this provision came to their knowledge, serve on the owner of the land a notice requiring him, within such period as may be specified in the notice, to plant a tree or trees of such size and species as may be so specified, and the provisions of Section 168 of the Act shall apply in any such case.



PROVISIONAL TREE PRESERVATION ORDERS.

15. The provisions of Section 163 (2) of the Act (which makes provision for a tree preservation order to take effect immediately without previous confirmation by the planning authority) shall apply to this Order and the Order shall take effect on the Sixth day of October Two Thousand and Six: IN WITNESS WHEREOF these presents typewritten on this and the six preceding pages together with the three schedules and map annexed hereto are subscribed for and on behalf of the said The City of Edinburgh Council by Craig Brodie Adamson, one of the proper officers of the said The City of Edinburgh Council at Edinburgh on the Third day of October Two Thousand and Six witnessed by Emma Dewar, of City Chambers, High Street, Edinburgh.



WITNESS



Proper Officer

## FIRST SCHEDULE

Trees specified individually (coloured green on the map)

<u>No. on Map</u>	<u>Description</u>	<u>Situation</u>
T1	Sycamore	Located in the grounds of 1, 2 and 3 Avenue Villas, Edinburgh, being the subjects registered in the Land Register of Scotland under Title Number MID92091.

Trees Specified by Reference to an Area (within a continuous black line on the map).

None.

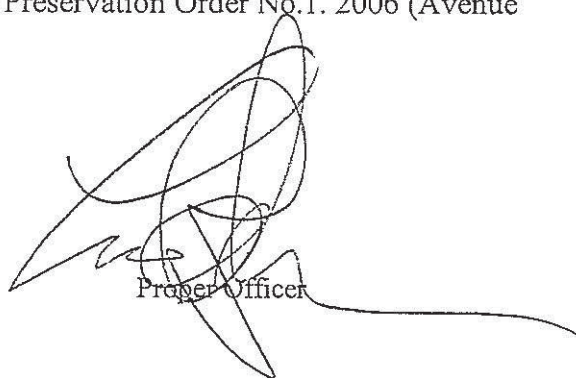
Group of Trees (within a broken black line on the said map)

<u>No. on Map</u>	<u>Description</u>	<u>Situation</u>
G1	Group consisting of seventeen birch, one beech, one sycamore, one lime and one laburnum.	Located in the grounds of 1, 2 and 3 Avenue Villas, Edinburgh, being the subjects registered in the Land Register of Scotland under Title Number MID92091.

Woodlands (within a continuous red line on the map)

None

This is the First Schedule of The City of Edinburgh Tree Preservation Order No.1. 2006 (Avenue Villas, Edinburgh).

  
Proper Officer



## SECOND SCHEDULE

This Order shall not apply so as to require the consent of the planning authority to -

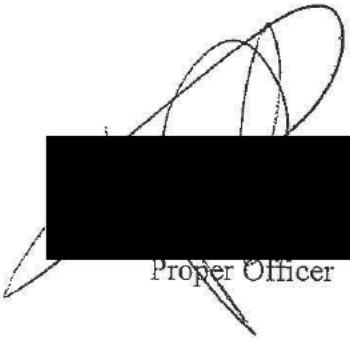
- (1) the cutting down of any tree on land which is subject to a forestry dedication agreement where:-
  - (a) any positive agreements on the part of the owner of the land contained in the same deed as the forestry dedication agreement and at the time of the cutting down binding on the then owner of the land are fulfilled;
  - (b) the cutting down is in accordance with a plan of operations approved by the Forestry Commission under such deed.
- (2) the cutting down of any tree which is in accordance with a plan of operations approved by the Forestry Commission under the approved woodlands scheme or other grant scheme under Section 4 of the Forestry Act 1967.
- (3) the uprooting, felling or lopping of any tree if such uprooting, felling or lopping is urgently necessary in the interests of safety, or is necessary for the prevention or abatement of a nuisance, so long as notice in writing of the proposed operations is given to the planning authority as soon as may be after the necessity for the operation arises, or if such uprooting, felling or lopping is carried out in compliance with any obligation imposed by or under any Act of Parliament. \*(NOTE: Section 167 (1) of the Act requires, unless on the application of the owner the planning authority dispense with the requirement, that any tree removed or destroyed under Section 160 (6) (a) of the Act shall be replaced by another tree of appropriate size and species. In order to enable the planning authority to decide whether or not to dispense with the requirement, notice of the proposed action should be given to the planning authority which except in the case of emergency should be of not less than 5 days.)

- (4) the uprooting, felling or lopping of a tree:-
- (a) in pursuance of the powers conferred on the Post Office by virtue of Section 5 of the Telegraph (Construction) Act 1908 and Section 21 of the Post Office Act 1969, or by or at the request of the Post Office where the land on which the tree is situated is operational land as defined by the Post Office Operational Land Regulations 1973 and either works on such land cannot otherwise be carried out or the uprooting, felling or lopping is for the purpose of securing safety in the operation of the undertaking;
  - (b) by or at the request of (i) a statutory undertaker or holder of a licence under Section 6 (1) of the Electricity Act 1989 where the land on which the tree is situated is operational land as defined by the Act and either works on such land cannot otherwise be carried out or the uprooting, felling or lopping is for the purpose of securing safety in the operation of the undertaking: (ii) a licence holder within the meaning of Part I of the Electricity Act 1989 where such a tree obstructs the construction by the licence holder of any electric line within the meaning of Part I of the said Act of 1989, or interferes or would interfere with the maintenance or working of any such line: (iii) the Secretary of State for Defence, the Secretary of State for Trade or the Civil Aviation Authority where in the opinion of such Secretary of State or Authority the tree obstructs the approach of aircraft to, or their departure from, any aerodrome or hinders the safe and efficient use of aviation or defence technical installations;

- (c) where immediately required for the purpose of carrying out development authorised by a planning permission granted on an application made under Part III of the Act, or deemed to have been granted for any of the purposes of that part.

This is the Second Schedule of The City of Edinburgh Tree Preservation Order No.1. 2006

(Avenue Villas, Edinburgh).



[Redacted signature]

Proper Officer

### THIRD SCHEDULE

(1) Provisions of the Act as adopted and modified to apply to this Order

#### PROVISIONS AS TO EFFECT OF CONSENT UNDER THE ORDER:-

44. (1) Without prejudice to the following provisions as to the revocation or modification of consents, any consent under the Order, including any direction as to replanting given by the planning authority on the granting of such consent, shall (except in so far as the consent otherwise provides), enure for the benefit of the land and of all persons for the time-being interested therein.

#### REFERENCE OF APPLICATIONS TO SCOTTISH MINISTERS

46. (1) Scottish Ministers may give directions to the planning authority requiring applications for consent under the Order to be referred to them instead of being dealt with by the planning authority.
46. (2)(b) A direction under this Section may relate either to a particular application or to applications of a class specified in the direction.
46. (3) Any application in respect of which a direction under this Section has effect shall be referred to Scottish Ministers accordingly.
46. (4) Where an application for consent under the Order is referred to Scottish Ministers under this section, the provisions of Articles 5 and 6 of the Order shall apply as they apply to an application for such consent which falls to be determined by the planning authority
46. (5) Before determining an application referred to them under this Section Scottish Ministers shall, if either the applicant or the planning authority so desire, afford to each of them an opportunity of appearing before, and being heard by, a person appointed by Scottish Ministers for the purpose.



- (6) The decision of Scottish Ministers on any application referred to them under this Section shall be final.

APPEALS AGAINST REFUSAL OF CONSENT OR CONDITIONAL CONSENT:-

47. (1) Where an application is made to the planning authority for consent under the Order and that consent is refused by that planning authority, or is granted by them subject to conditions or where any certificate or direction is given by the planning authority, the applicant if he is aggrieved by their decision or by any such certificate or direction may by notice under this section appeal to Scottish Ministers.
47. (4) Any notice under this Section shall be served in writing within twenty-eight days from the receipt of notification of the decision, certificate or direction, as the case may be, or such longer period as Scottish Ministers may allow.
48. (1) Where an appeal is brought under this Section from a decision, certificate or direction of the planning authority, Scottish Ministers, subject to the following provisions of this Section, may allow or dismiss the appeal, or may reverse or vary any part of the decision of the planning authority, whether the appeal relates to that part thereof or not or may cancel any certificate or cancel or vary any direction and may deal with the application as if it had been made to them in the first instance.
48. (3) Provided that where Scottish Ministers propose 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 applicant and shall afford to them an opportunity to make representations thereto.

48. (2) Before determining an appeal under this Section, Scottish Ministers shall, if either the applicant or the planning authority so desire, afford to each of them an opportunity of appearing before, and being heard by, a person appointed by Scottish Ministers for the purpose.
48. (6) The decision of Scottish Ministers on any appeal under this Section shall be final.

APPEAL IN DEFAULT OF DECISION ON APPLICATION FOR CONSENT:-

- 47 (2). Where an application for consent under the Order is made to the planning authority, then unless within two months from the date of the application, or within such extended period as may at any time be agreed upon in writing between the applicant and the planning authority, the planning authority either:-
- (a) give notice to the applicant of their decision on the application; or
  - (b) give notice to him that the application has been referred to Scottish Ministers in accordance with directions given under Section 46 above; the provisions of the last foregoing Section shall apply in relation to the application as if the consent to which it relates had been refused by the planning authority, and as if notification of their decision had been received by the applicant at the end of the said period of two months, or at the end of the said extended period, as the case may be.

POWER TO REVOKE OR MODIFY CONSENT UNDER THE ORDER:-

65. (1)(2) If it appears to the planning authority, having regard to the development plan and to any other material considerations, that it is expedient to revoke or modify any consent granted on an application made under Article 3 of the Order, they may (by

order) subject to the following provisions of this Section revoke or modify the consent to such extent as (having regard to those matters) they consider expedient.

66. (1) Except as provided in Section 67 of the Act, an order under this Section shall not take effect unless it is confirmed by Scottish Ministers; and Scottish Ministers may confirm any such order submitted to them either without modification or subject to such modifications as they consider expedient.

66. (2)-(5) Where the planning authority submit an order to Scottish Ministers for their confirmation under this Section they shall furnish Scottish Ministers with a statement of their reason for making the order and shall serve notice, together with a copy of the aforesaid statement on the owners, lessees and occupiers of the land affected and on any other person who in their opinion will be affected by the order; and if within such period as may be specified in that notice (being not less than twenty-eight days from the service thereof) any person on whom the notice is served so requires Scottish Ministers, before confirming the order, shall afford to that person and to the planning authority an opportunity of appearing before, and being heard by, a person appointed by Scottish Ministers for the purpose.

65. (3)(4) The power conferred by this Section to revoke or modify consent may be exercised at any time before the operations for which consent has been given have been completed: Provided that revocation or modification of consent shall not affect so much of these operations as has been carried out before the date on which the order was confirmed as aforesaid.



UNOPPOSED REVOCATION OR MODIFICATION OF CONSENT:-

67. (1)(2) The following provisions shall have effect when the planning authority have made an order under Section 42 above revoking or modifying any consent granted on an application made under a Tree Preservation Order but have not submitted the Order to Scottish Ministers for confirmation by them, and
- (a) the owner, lessee and occupier of the land and all persons who in the planning authority's opinion will be affected by the order have notified the authority in writing that they do not object to the order; and
  - (b) it appears to the planning authority that no claim for compensation is likely to arise under Section 76 of the Act on account of the order.
67. (2)(4)(5) The planning authority shall advertise in the prescribed manner the fact that the order has been made, and the advertisement shall specify:-
- (a) the period (being not less than twenty-eight days from the date on which the advertisement first appears) within which persons affected by the order may give notice to Scottish Ministers that they wish for an opportunity of appearing before, and being heard by, a person appointed by Scottish Ministers for the purpose; and
  - (b) the period (not being less than fourteen days from the expiration of the period referred to in paragraph (a) of this subsection) at the expiration of which, if no such notice is given to Scottish Ministers, the order may take effect by virtue of this Section and without being confirmed by Scottish Ministers.
67. (3) The planning authority shall also serve notice to the same effect on the persons mentioned in subsection (a) above, and the notice shall include a statement to the effect that no compensation is payable under Section 76 of the Act in respect of an

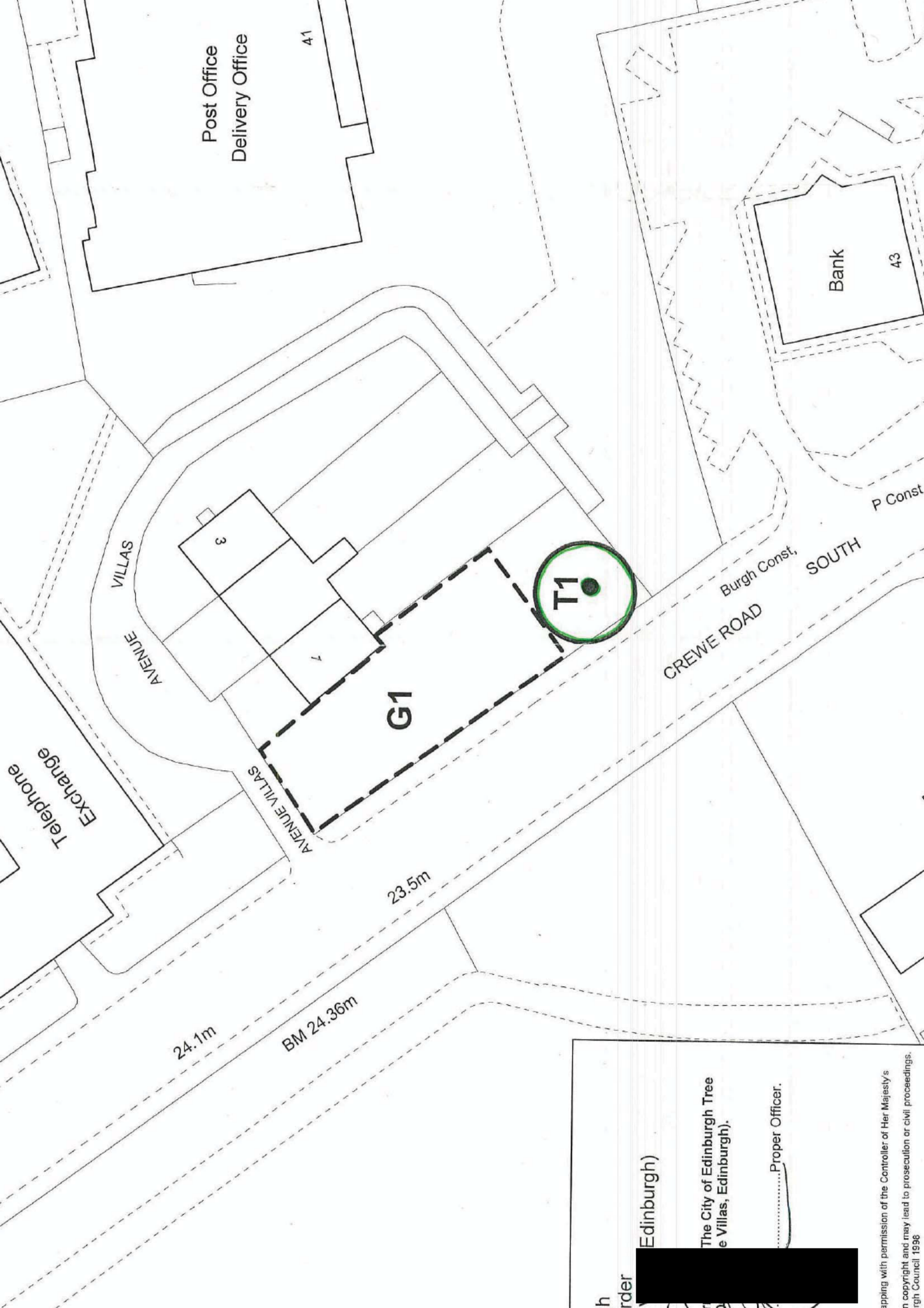


order under Section 65 of the Act which takes effect by virtue of this Section and without being confirmed by Scottish Ministers.

67. (6) The planning authority shall send a copy of any advertisement published under subsection (2) above to Scottish Ministers not more than three days after the publication.
67. (7) If within the period referred to in subsection (a) above no person claiming to be affected by the order has given notice to Scottish Ministers as aforesaid, and Scottish Ministers have not directed that the order be submitted to them for confirmation, the order shall, at the expiration of the period referred to in subsection (b) above, take effect by virtue of this Section and without being confirmed by Scottish Ministers as required by Section 66(1) above.
67. (8) This Section does not apply to an order revoking or modifying a consent granted or deemed to have been granted by Scottish Ministers under Parts III or VI of the Act.

COMPENSATION WHERE CONSENT REVOKED OR MODIFIED:-

76. (1) Where consent is revoked or modified by an order under Section 65 above then if, on a claim made by the planning authority in writing within the period of six months from the date of the confirmation of the order by Scottish Ministers, it is shown that any person interested in the land:-
- (a) has incurred expenditure in carrying out work which is rendered abortive by the revocation or modification; or
- (b) has otherwise sustained loss or damage which is directly attributable to the revocation or modification,
- the planning authority shall pay to that person compensation in respect of that expenditure, loss or damage.



Edinburgh)

The City of Edinburgh Tree  
e Villas, Edinburgh).

.....Proper Officer.

Anne Hally & Derek Peacock  
3 Avenue Villas  
Edinburgh  
EH4 2HU

By email :- [REDACTED] and post

**10/10/2022**

Dear Sir

Planning Application 22/02322/FUL (“Planning Application”)  
Application for a Review to the City of Edinburgh Council’s Local Review Body.

### **Summary**

We believe this attempt by the appellant’s planning application is failing to deliver the required level of compliance needed for an extension on a listed building along with the negative impact on a woodland subject to Tree Preservation Order No 157. As such the proposed development should be refused.

### **Reasons:-**

The applicant has for many years been applying, unsuccessfully, to initially build a stand alone house and more recently an extension which has changed in size and style to various degrees depending on the feedback from the Planning Department. We worry that a number of things have been overlooked and would like to draw them to your attention.

- We believe the site is too small for the proposed development. This is a listed building of three bedrooms which is to be turned into a house with 2 sitting rooms, a study, a plant room and a utility area (including a large basement area) as well as the existing 3 bedrooms. Is this size in keeping with the existing building? We believe it is the existing building which provides the scope to increase the size so does this set a precedent that large basement extensions are acceptable?
- In the last submission we were advised that a specialist flood report would be made available. As yet we have not seen any flood report and feel that this is a crucial piece of information given that this area has been known historically to be susceptible to flooding. Where is this report?
- Tree Preservation Order No 157 – when we moved into Avenue Villas there was a mature and thriving canopy of trees which gave coverage and protection enjoyed by 1, 2 and 3 Avenue Villas. You can see the woodland on the Google Maps print out. Many of the trees have subsequently been damaged and now replaced under an enforcement order but our concern is that these trees will not be retained and could

be harmed during a construction process of this scale or materially impact their growth. Given that a significant loss to the natural tree group on the site has already been undertaken with the damage to and then removal of some of the previous trees without permission we are concerned that the building works will be very close to the re-planted trees on the plans especially as a vast basement is proposed. It is clear from the Google map image that there is simply not enough room to accommodate the protected trees and the proposed development on the site. We understand that the TPO is intended to protect the trees from damage. Clearly to allow the proposed development to proceed will result in damage to some of the protected trees (if not all).

- Foundations – as the proposed works include large basement adjoining a listed building careful judgement is needed to ensure that construction works do not affect the existing buildings of the neighbouring properties. Could earthworks affect the structure of the existing building and the neighbouring properties? Again, we have seen nothing in the application to provide us with any comfort that structural damage is not a risk.
- The applicant has already failed to comply with a planning condition attached to a previous listed building consent concerning the creation of a new entry. In particular, the failure to comply with planning condition to put a sliding gate in place.
- In the previous Planning Application, we were told that an Arboriculture Impact Assessment and Tree Survey would be provided whilst I appreciate that it is not uncommon for additional surveys to be uploaded during the consultation process this report did not arrive in time. The first time we received sight of this report was when we were notified that the appeal had been made. Having now read the report, it is clear that it does not consider all the trees which are protected by the TPO
- The applicant has previously caused damage to the protected trees and failed to comply with an order to replant them. We don't think it is fair to allow the applicant to benefit from these wrongs in his current application.

For all of the above reasons, we consider that the original refusal of the proposed development should be upheld.

Yours faithfully

***Anne Hally & Derek Peacock***



**From:**



**Subject:**

Re: LRB - 22/02322/FUL - 1 Avenue Villas

**Date:**

05 January 2023 22:36:56

Dear Sarah,

Thank you for your email on which I would comment as follows.

I note that your internal report supports and endorses the position adopted by our expert, which in turn had been the position adopted by the Council in the first instance when they refused the application.

I also note that the Council's report also clarifies that although the 13 replacement trees were subject to the TPO, the Appellant's expert made no comment on how they would be affected by the development.

It is now clear that the Council, its expert and our expert all consider the development will adversely affect the trees covered by the TPO. Further, there is no report suggesting that the protected trees can be protected if the development were allowed.

I trust the Board will now consider the only appropriate course is to refuse the appeal.

Kind regards

Anne Hal

On 21 Dec 2022, at 11:14, Local Review Body  
<[LocalReviewBody@edinburgh.gov.uk](mailto:LocalReviewBody@edinburgh.gov.uk)> wrote:

Dear Sir/Madam

**TOWN & COUNTRY PLANNING (SCOTLAND) ACT 1997 AS AMENDED  
BY THE PLANNING ETC (SCOTLAND) ACT 2006.**

**NOTIFICATION OF NOTICE OF REVIEW**

**Name:** Mr Hancox

**Site:** 1 Avenue Villas Edinburgh EH4 2HU

**Description:** Demolish existing rear extension and form new extension to the side and rear to house living, dining and utility facilities. Form basement to extension with study and plant room. Minor internal remodelling of existing house. Apex roof light over existing stair.

**Planning Application:** 22/02322/FUL

I am writing to let you know that this case was continued by the Local Review Body. Details of the reason for continuation can be found below.

The review will be considered again in public by the Local Review Body on **18 January 2023** at 10.00am in the Dean of Guild Room, City Chambers, High Street, Edinburgh. The review body will either make a decision on the case on that day based on the evidence submitted or continue the case further. This may be for a site visit, further information or to convene a hearing where all parties will be invited to speak. You will be advised if the case is continued again.

At the Local Review Body meeting on 30 November, the Panel requested that the above application be continued to allow:

- A site visit
- A response from the Council's Arboricultural Officer, specifically addressing the content of both the Tree Report from the appellant written by Hinshelwood Arboricultural Consultants, and the Tree Report from the objector written by Julian A Morris, as these appear to offer conflicting opinions.

The site visit is due to take place on 12 January 2023 at 10am. This will be an unaccompanied site visit, where the Panel and the Planning Advisor will attend the site.

Attached for your consideration is the Council's Arboriculturist's response. Should you wish to make further representations, I would be grateful if your additional comments could be made in response to the attached document only. All previous representations will still be taken into consideration when determining this case.

Please note that you have 18 days (due to four public holidays) from the date of this email to make your representations.

Kind regards

[Redacted signature block]

[Redacted signature block]

Wed/Thu

07:00 – 15:30 Fri

<image001.jpg>

\*\*\*\*\*  
This email and files transmitted with it are confidential and are intended for the sole use of the individual or organisation to whom they are addressed.  
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\*\*\*\*\* <LRB Proposed  
Development at 1 Avenue Villas Ref 22-2322-FUL.docx>

Gina Bellhouse  
Planning Advisor  
Local Review Body  
City of Edinburgh Council

E [alastair.mckie@andersonstrathern.co.uk](mailto:alastair.mckie@andersonstrathern.co.uk)  
DD 0131 625 7257  
Fax: 0131 625 8030  
OUR REF FAR0165.0001  
Your Ref: 22/00149/REVREF

06 January 2023

Dear Madam,

**Notice of Review 22/00149/REVREF by Mr Hancox (“Appellant”)  
Planning Application 22/02322/FUL (“Planning Application”)  
Site: 1 Avenue Villas Edinburgh EH4 2HU: Description of Development : Demolish existing rear extension and form new extension to the side and rear to house living, dining and utility facilities. Form basement to extension with study and plant room. Minor internal remodelling of existing house. Apex roof light over existing stair.**

**Katrina Lumsdaine and Bruce Farquhar, 2 Avenue Villas, Edinburgh (our “Clients”)**

## **1 Introduction**

On behalf of our Clients, we can confirm that we have examined carefully the comments of the Council’s independent Aboricultural Officer. We note that in every substantive area of disagreement between the Appellant’s report by Hinselwood Aboricultural Consultants (HAC) and our Clients’ report by Julian A Morris (JAM), the HAC report was found to be incorrect and the JAM report was found to be correct. The most fundamental error in the HAC report is its failure to assess the impact of the proposed development on the 13 replacement trees that are protected under the TPO.

## **2 Determining Issue**

The central and determining issue for the LRB is whether the proposed development will have an adverse impact on the 13 replacement trees. As is clear from the comments of the Aboricultural Officer, the HAC report has not made any assessment of the 13 replacement trees. It is important to acknowledge that the planning application was refused by the Planning Officer because it is contrary to the Local Development Plan Policy Env 12 in respect of trees, as the location of the extension would impact on the long-term growth of the 13 replacement trees which are protected under the TPO. The Planning Officer has carefully assessed these adverse impacts. The JAM report confirms this and the Aboricultural Officer quotes the advice of Julian Morris to that effect in paragraph 3. C. of the JAM report.



### **3 Arboricultural Officer's Comments**

**Keeping the same headings and numbering** as contained in the Arboricultural Officer's comments our Clients' comment as follows:-

#### **2. *The identification of the Tree Preservation Order (TPO) protecting the trees.***

Our Clients' comments- The Arboricultural Officer confirms that the 13 replacement trees are protected under the TPO and that access to that information can be obtained by examining the Council's website.

#### **3. *The omission from the HAC survey/report of 13 young trees within the application site but referred to in the JAM report and the effects of development on them.***

Our Clients' comments-The Arboricultural Officer quotes in full the JAM report's assessment of the long-term adverse impact of the proposed development on the protected trees and does not deviate from it. This was the basis on which the original planning application was refused by the Planning Officer. The Arboricultural Officer notes that there is no comment at all in the HAC report on the effect of the proposed development on these trees. The Arboricultural Officer specifically accepts, in terms of the JAM report, that the value of the 13 replacement trees is that they will deliver a substantial long-term visual amenity in the local landscape and will enhance the ecological values of the site. The conclusion is that the Planning Officer in his original decision making, the JAM report and now the Arboricultural Officer all refer to the adverse impact of the proposed development on the trees, with no assessment at all being put forward by HAC. Three experts refer to the damage to the trees, with no expert stating otherwise.

#### **4. *The BS5837 'retention category' allocated to trees in each report***

Our Clients' comments- We accept and adopt the Arboricultural Officer's conclusion that the JAM report was correct and that HAC report was incorrect in its categorisation of the mature trees on the site.

#### **5. *The allowance for the construction space required around the building footprint***

Our Clients' comments- Again, we accept and adopt the Arboricultural Officer's assessment that JAM report was correct and the HAC report was incorrect to fail to take account of this "vital consideration" of the impact of the works on the mature trees. The Arboricultural Officer also notes the HAC report's absence of a Tree Protection Plan.

#### **6. *The reference to a 20% encroachment into the Root Protection Area permitted by BS5837***

Our Clients' comments- Finally, again, we accept and adopt the Arboricultural Officer's assessment that the JAM Report was correct and HAC report was incorrect to state that BS5837 allows for a 20% encroachment into the Root Protection Area of the trees. We also accept the assessment that the encroachment is likely to be "significantly greater" than the 8% suggested in the HAC report.

### **4. Conclusion**

The Arboricultural Officer's comments are an endorsement of the JAM report and a fundamental criticism of the HAC report. Accordingly, we respectfully request that the LRB accept the evidence of (a) the Planning Officer in his Report of Handling and the terms of the Decision Notice which refused the planning application as it is contrary to LDP policy 12 and (b) Julian A Morris in the JAM report and accordingly reject the evidence put forward in the HAC report particularly as it does not consider the impacts of the proposed development on the 13 replacement trees protected under the TPO.

We therefore invite the LRB to refuse the application and the proposed development as it is contrary to the Local Development Plan Policy Env 12 in respect of trees, as the location of the extension would adversely impact on the long-term growth of replacement trees protected under the TPO.

Yours faithfully



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