

23 October 2017

Legal and Democratic Services
Corporate Governance
Aberdeen City Council
Level 1 South
Marischal College
Broad Street
Aberdeen AB10 1AB



For Attn : **Kate Johnstone**

Dear Madam,

Town and Country Planning (Scotland) Act 1997
City of Aberdeen Tree Preservation Order No. 249/2017
Land At Malcolm Road, Peterculter, Aberdeen

Further to the above noted Order and to your letter dated 27th September 2017 issued to Combined Corporation BVI Limited, we can confirm that we have been duly forwarded a copy of this correspondence, due to Churchill Homes Properties (Scotland) Limited having a legal contract in place with Combined Corporation (BVI) Limited over all of the land highlighted in red and referred to as W1 within the Order.

We note that the Council will not be moving to confirm TPO 247/2017, however wish to supersede with TPO 249/2017.

Therefore, we wish to make a Formal Representation to Reject this Order for a number of reasons referred to as follows;

Firstly, we question the legal validity of TPO 249/2017 on the following basis :-

- a) We believe that TPO 249/2017 was not served at the registered offices of the title holders, but at that of which a sister company operates from.
- b) The 'red line' referred to within the First Schedule, which serves to identify all of the 'Woodland' to be included within the Order, only includes the land covered in Title ABN69460. Although the Order refers to other land within Title ABN106810, this is not included within the 'red line' on the plan annexed.
- c) The First Schedule of TPO 249/2017 remains unsigned by a Proper Officer.
- d) The First Schedule of TPO 249/2017 refers to "A predominantly Birch Woodland" which was not mentioned in any of the previous three unconfirmed Orders. This statement is incorrect.
- e) Schedule 2 of TPO 249/2017 remains unsigned by a Proper Officer.
- f) The Statement of Reasons annexed to TPO 249/2017 gives no detail regarding inspection of the Order by the public.

cont./

Churchill Homes Properties (Scotland) Limited 11 Broomhill Road, Aberdeen, AB10 6JA
Tel: 01224 256180 Fax: 01224 256181 Web: www.churchill-homes.co.uk E-mail: info@churchill-homes.co.uk

b/fwd.



Churchill
H O M E S

- g) The Statement of Reasons annexed to TPO 249/2017 gives no detail concerning the lodging of observations and representations to the Order.
- h) The Statement of Reasons annexed to TPO 249/2017 does not provide a Statement of Effect of Direction.
- i) The Statement of Reasons annexed to TPO 249/2017 has not been signed as is required by Section 8 (2) of the Requirements of Writing (Scotland) Act 1995.

In addition to the question of validity, our reasons for Representation and Rejection of Tree Preservation Order 249/2017, are :-

1. We note that this is now the FOURTH Tree Preservation Order issued by Aberdeen City Council for the area of land in question, with the first three Orders, namely TPO 240/2017 issued on 5 January 2017, TPO 241/2017 issued on 17 January 2017 and TPO 247/2017 issued on 4th April 2017, all having been suggested as being superseded and that Aberdeen City Council will not be moving to have them confirmed.
2. This recent Order was issued on 27th September 2017, blanket covering the Whole of the land within the Title currently owned by Combined Corporation (BVI) Limited and also now referring to an area of land to the north east of the site outwith the interests of either Combined Corporation (BVI) Limited or Churchill Homes Properties (Scotland) Limited, following recent tree felling/woodland management works carried out on site. This has subsequently prevented the clearance of the felled timber by any reputable woodland contractors.
3. Within the Statement of Reasons for Making the Order, it makes reference to the trees on the site being included in the Scottish Ancient Woodland Inventory (AWI), prepared by Scottish Natural Heritage. However, there has been no similar Tree Preservation Order placed on the neighbouring land owner, although tree felling and clearance has been carried out and **continues to be carried out on a regular basis**, on land which is covered by the same Ancient Woodland Inventory.
4. Having had previous meetings with Kevin Wright of Aberdeen City Council's Planning and Sustainable Development department, we re-affirm our request for clarification as to why this fourth version of Tree Preservation Order (and previous order TPO 247/2017) has been amended to include an area of land to the **North East** of the site, **outwith the current ownership of area W1**, however the mature Scots Pine trees to the **South West** of the site, **also outwith the current ownership of area W1**, have not been included within the most recent TPO 249/2017.

cont./

b/fwd.



Churchill
HOMES

These trees most specifically, have been identified by the Local Plan Team, Scottish Ministers, Scottish Natural Heritage and Forestry Commission Scotland as requiring to be protected and not to be felled.
However Aberdeen City Council continue to ignore this.

5. If the purpose of the Tree Preservation Order is to protect the trees on the site, then there cannot be a differentiation of status within the same area of woodland simply because of differing ownership, which is clearly now established. **However, by continued omission of the area of mature Scots Pine trees along the frontage of site on Malcolm Road within neighbouring land under different ownership, there is now a continued clear and worrying inconsistency with this action by the Local Authority.**
6. This site was previously clear felled under licence as a Commercial Woodland, and has since been allowed to re-grow in an unmanaged fashion. Therefore, in terms of Ancient Woodland, the remaining trees and scrub are less than 20 years old, with the exception of the mature Scots Pine along the frontage of Malcolm Road.
7. As stated above, with the exception of the mature Scots Pine along the frontage of Malcolm Road, any trees which were not clear felled on the site when the current Tree Preservation Order was issued on 27th September 2017 (or previous versions), are of poor quality, of little value and are a mix of self seeded birch etc with less than 30% semi-natural state.
8. Following a meeting with Forestry Commission Scotland at the Legal Offices of Combined Corporation (BVI) Limited, we understand that Forestry Commission Scotland have no objection with the removal of the felled timber using machinery normally associated with woodland management of this type. However should the site be covered by a TPO, woodland contractors are legally prevented from carrying this out as they require to work within the areas containing stumps of clear felled trees. These trees have been confirmed as 'felled' and require to be removed under good management practice.
9. As a result of this, the site remains in an unsafe, unsightly and unmanageable state and with the threat of a TPO being in place, has sterilized the land in terms of any existing or proposed use. Therefore in effect placing the value of the site as negligible, even in terms of the current use of commercial woodland.

cont./



Churchill
HOMES

Therefore, taking the foregoing into consideration, we would propose that :-

- A. Tree Preservation Order 249/2017 is **invalid and rejected**.
- B. In the interests of protecting the Mature Scots Pine trees along the frontage of the site and also along neighbouring land on Malcolm Road, that the Local Authority within its powers, identifies & protects these trees within revised Tree Preservation Orders, irrespective of landownership. This would reflect what has been proposed by the Reporter within the latest version of the Aberdeen Local Development Plan.
- C. Following clearance of the site of felled timber, a suitable Woodland Management plan is prepared with the approval of the Local Authority and Forestry Commission Scotland.

We trust that the above will be considered fully in relation to the specific Tree Preservation Order 249/2017, and that the proposals made are considered acceptable and are implemented as a matter of course. I would be pleased to meet with you again to discuss an acceptable solution for all parties, if this was thought suitable.

Yours faithfully,

Kenny Clubb
Director
Churchill Homes Properties (Scotland) Limited

- cc. Eric Stamper c/o Lindsay & Kirk Solicitors, Aberdeen
Claire Williams-Smith, Lindsay & Kirk Solicitors, Aberdeen
Cllr Marie Boulton, Lower Deeside. ACC
Eric Owens, Interim Head of Planning & Sustainable Development, ACC
Kevin Wright, Planning & Sustainable Development, ACC