



EIR Ref:2018/043

24<sup>th</sup> January 2019

#### **REQUEST UNDER ENVIRONMENTAL INFORMATION (SCOTLAND) REGULATIONS 2004**

We refer to your request for information, received by email on 21<sup>st</sup> December 2018. The information you have requested is environmental information, as defined in Regulation 2 of the Environmental Information (Scotland) Regulations 2004 (EIRs). The Park Authority has an obligation to deal with your request under the EIRs and an option to also deal with your request under the Freedom of Information (Scotland) Act 2002 (FOISA), unless the public interest lies in dealing with your request solely under the EIRs. We consider that the public interest in dealing with your request solely under the EIRs outweighs the public interest in also dealing with your request under FOISA, on the basis that the public interest is not served by duplicating consideration of your request under both regimes. We have therefore applied the exemption in section 39(2) of FOISA and dealt with your request under the EIRs alone.

Your specific request and the response from the National Park Authority are provided below.

**“The information requested is; the specific exceptional reasons why LL&TTNPA, as the Planning Authority and aware that trees had been felled, has not had each of the five Oak Trees, felled by WDC whilst the tees are protected by TPO No 44, replaced.”**

Please find attached letter sent from the National Park Authority to West Dunbartonshire Council (the “Council”). The content of this letter sets out the reasons why the Park Authority has not taken action to have the five Oak trees felled by the Council replaced.

While the work to remove the oak trees was undertaken by the Council, the trees were situated on privately owned ground and were therefore the responsibility of the individual landowners.

Where a tree protected by a tree preservation order (“TPO”) is removed without authorisation, Section 167(1) of the Town and Country Planning (Scotland) Act 1997 places a duty on the owner of the land to plant another tree of an appropriate size and species at the same place as soon as he reasonably can. If the landowner does not replant voluntarily the planning authority can serve a notice on the landowner requiring the replacement of the tree or trees. After that, if the trees are not replanted within the specified timescale the planning authority can take steps to enter the

LOCH LOMOND & THE TROSSACHS NATIONAL PARK AUTHORITY

National Park Headquarters, Carrochan, Carrochan Road, Balloch, G83 8EG Long: 4°34'24"W Lat: 56°00'12"N  
t: 01389 722600 f: 01389 722633 e: [info@lochlomond-trossachs.org](mailto:info@lochlomond-trossachs.org) w: [lochlomond-trossachs.org](http://lochlomond-trossachs.org)

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land and replant the trees, and recover any expenses reasonably incurred by them from the landowner.

As no formal permission was sought from or granted by the Park Authority for the removal of any of these trees, the Park Authority was in a position whereby it may have had to consider taking enforcement action against the landowners for unauthorised works which were perhaps undertaken without their consent. As set out in our correspondence to the Council, the Park Authority considered that to be an unfair situation which would have penalised the landowners for unauthorised works undertaken by the Council.

If tree replacement notices had been served on the landowners, any expenses incurred by the landowners in complying with the notice or, more likely paid to the planning authority in respect of expenses incurred in replanting the trees, would have been recoverable from the Council as the body responsible for removing the original trees. The Park Authority therefore placed the onus upon the Council to remedy the situation direct with the landowners by negotiating replanting with them to save the landowners from expense.

Yours sincerely

Governance & Legal Team  
Loch Lomond & The Trossachs National Park Authority

#### Review Procedure

If you are dissatisfied with this decision, or the way in which the Authority has dealt with your request, you are entitled to require the Authority to review its decision. Please note that in order for a review to take place you are required to:

- Send your request for review in writing, setting out in full the reasons why you are requesting a review.
- Submit your review request within 40 working days of either the date on which you received a response from the Authority or the date by which you should have received a response under the terms of the Freedom of Information (Scotland) Act 2002, whichever is the later.
- address your review request to:

Governance & Legal Team  
Loch Lomond & The Trossachs National Park Authority  
National Park Headquarters  
Carrochan  
Carrochan Road  
Balloch  
G83 8EG  
E-mail: [info@lochlomond-trossachs.org](mailto:info@lochlomond-trossachs.org)

The review will be handled by staff who were not involved in the original decision. You will receive notice of the result of your review within 20 working days.

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If you are not satisfied with the response to your request for review, you can contact the Scottish Information Commissioner, the independent body which oversees the Freedom of Information (Scotland) Act 2002, at:

Scottish Information Commissioner

Kinburn Castle

Doubledykes Road

St Andrews

Fife

KY16 9DS

Tel: 01334 464610

Website: [www.itspublicknowledge.info](http://www.itspublicknowledge.info)

E-mail: [enquiries@itspublicknowledge.info](mailto:enquiries@itspublicknowledge.info)

Online appeal portal: [www.itspublicknowledge.info/Appeal](http://www.itspublicknowledge.info/Appeal)

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Donald Petrie  
West Dunbartonshire Council  
Garshake Road  
Dumbarton  
G82 2PU

File ref:

Dear Donald,

**The Dumbarton District Council Tree Preservation Order No.44, 1991: Drymen Road, Balloch**

I write with reference to our recent discussions on the above matter.

As you are aware, on two occasions over the past three years West Dunbartonshire Council has been responsible for felling trees protected by the above Tree Preservation Order without the permission of LL&TTNPA who is responsible for administrating TPO's within the National Park, including those served by WDC (and its predecessor authorities) prior to the designation of the National Park. As we have stated during our discussions with you and your colleagues, no permissions would have been issued by the Authority to remove any of these trees without a condition to replant. I should point out that we would not have refused permission to remove or make safe any tree that was considered unsafe or in any way a danger to the public or local residents.

We understand that although the work was undertaken by WDC, the trees stand on privately owned ground and are therefore the sole responsibility of the individual landowners. As no formal permissions have been granted for the removal of any of these trees, the NPA is currently in a position where we may have to consider taking enforcement action against the landowners for unauthorised works if no compromise position can be agreed. Enforcement action will take the form of Tree Replacement Notices being served on the landowners under section 167 of the Town and Country Planning (Scotland) Act. The landowners will have a right of appeal to the Scottish Government. This is clearly an unfair situation which will penalise the landowners for works undertaken by your Council without the necessary permissions (and attached conditions) and action that would be a last resort for the NPA. We would prefer to see WDC negotiate appropriate replanting (details to be agreed with the NPA) with the landowners and maintain the trees until establishment at no cost to the landowners involved.

This group of trees forms a particularly important feature of the village and contributes significantly to the amenity value of Drymen Road. A Tree Preservation Order was served by your predecessor authority on the trees in recognition of the valuable contribution they make to the area and to provide a mechanism to ensure that the feature is maintained in perpetuity

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through replacement planting.

We now hope that you will revisit the landowners affected by this unfortunate situation to negotiate replanting as soon as possible.

If I can be of any assistance, please do not hesitate to contact me.

Yours sincerely,

**Iona Hyde**  
**Trees and Woodlands Adviser**

e-mail: [iona.hyde@lochlomond-trossachs.org](mailto:iona.hyde@lochlomond-trossachs.org)  
tel: 01389 722635

cc.