

**From:** Planning  
**Sent:** 01 February 2021 13:04  
**To:** Planning  
**Subject:** Comments for Planning Application P/21/0029

Planning Application comments have been made. A summary of the comments is provided below.

Comments were submitted at 1:03 PM on 01 Feb 2021 from Mr Paul Williamson.

## **Application Summary**

**Address:** Land 120M Northeast Of 55 Bothwell Road Bothwell Road  
Hamilton South Lanarkshire

**Proposal:** Erection of two dwellinghouses with associated studio  
flats above attached garage, raised decking at rear and  
formation of access.

**Case Officer:** Jim Blake

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## **Customer Details**

**Name:** Mr Paul Williamson

**Email:**

**Address:** 67 Hamilton Park South Hamilton South Lanarkshire

## **Comments Details**

**Commenter Type:** Neighbour

**Stance:** Customer objects to the Planning Application

**Reasons for comment:**

**Comments:** Planning Application Ref P/21/0029 - Land Off Bothwell Road, Hamilton

I am formally submitting my objections to the proposed development detailed above based on the following:-

1. Tree Preservation Order - TPO - The site is covered in woodland and is protected by a Tree Preservation Order to protect the natural environment; I see no reason to overturn this preservation order.

There are dozens of trees marked for removal in the application, not to mention several trees that like like they have been omitted from the site survey especially between tree 2137A and 2223C. I could not find a way to attach an image to the comments section on the planning application website, but if you compare the site survey to google maps aerial view you will see my concern.

2. I understand a Survey commissioned by the National Trust for Scotland and verified by the National Biodiversity Network (Scotland) records that a great variety of birds and wildlife use this site and the

surrounding area as their natural habitat. They include Buzzards; Goldfinch and Greenfinch (protected under Wildlife Countryside Act 1981); as well as a wide range of common birds such as Rooks; Robins; Blue Tits; Gulls and Woodpigeons. In addition Bats (see note 4 further down); Deer; Toads; and Squirrels also inhabit this particular site.

3. Overlooking/ Loss of Privacy - One of the gable walls of the house adjacent to Hamilton Park South development would be overlook the dividing fence at Hamilton Park South and This proposed gable incorporates 1 window and 2 sets of Double Patio Doors at ground level, and 3 windows and a balcony at first floor level. All of these windows will directly face onto the gable of the 8 flats in Hamilton Park South which have large floor to ceiling windows including bedrooms. The new development will therefore result in overlooking and a loss of privacy for the 8 flats looking directly onto the proposed development - Nos 61,63, 67,69, 73, 75, 79, 81.

The gardens of the new development could also result in an ever worse loss of privacy. If the garden of the new building extends right up to the fence/land boundary. The Hamilton Park South windows are only about one and a half metres from this fence and face directly onto the garden.

#### 4. Bat Roost Preservation

I have seen dozens if not hundreds of bats flying in and out of this woodland area many times. In Britain all bat species and their roosts are legally protected, by both domestic and international legislation.

This means you may be committing a criminal offence if you:

Intentionally or recklessly disturb a bat in its roost or deliberately disturb a group of bats.

Damage or destroy a place used by bats for breeding or resting (roosts) (even if bats are not occupying the roost at the time)

Intentionally or recklessly obstruct access to a bat roost.

Please refer to the legislation for the precise wording - the above is a brief summary only

A bat survey should have been carried out by the developer. As far as I know none has been.

Making planning decisions without due consideration of priority species is contrary to the Natural Environment & Rural Communities (NERC) Act 2006 which applies to all public organisations, including local authorities. s.40 of the Act states "Every public authority must, in exercising its functions, have regard, so far as is consistent with the proper exercise of those functions, to the purpose of conserving biodiversity." Under s.41 of the Act, bats are listed by Defra as a priority species for the conservation of biodiversity.

-In Scotland the duty is contained within Part 1 Section 1 of The Nature Conservation (Scotland) Act 2004

It is an offence under the Wildlife and Countryside Act 1981(as amended) if you:

- intentionally or recklessly disturb a roosting or hibernating bat i.e. disturbing it whilst it is occupying a structure or place used for shelter or protection).
- intentionally or recklessly obstruct access to a roost (i.e. a structure or place used for shelter or protection).

Some major bat roosts carry statutory protection; in such cases LPAs will have further obligations under the Wildlife and Countryside Act for any Sites of Special Scientific Interest and/or Special Areas of Conservation designated for their bat interest.

LPAs are a competent authority under Regulation 7(1) of the Conservation of Habitats and Species Regulations 2017, under which they must have regard to the requirements of the Habitats Directive.

The Directive includes a strict system of protection for certain European Protected Species (EPS) including all species of wild bats found in the EU. These requirements have been implemented by Part 3 of the Habitats Regulations so LPAs must have regard to the contents of Part 3 prior to granting planning permission where European protected species - such as bats - may be affected.

-In Scotland the duty is contained within Part 1 Section 1 of The Nature Conservation (Scotland) Act 2004

Relationship between licensing and planning permission - 'The three tests'

The statutory requirements include a system of strict protection for European Protected Species (EPS), such as bats. A derogation (deviation) from this strict protection - by way of a licence granted to a person under the Regulations - is only allowed in certain limited circumstances and only after three specific tests have been satisfied.

Where bats may be harmed by a development proposal (e.g. such that one or more criminal offences is reasonably likely to be committed), the LPA must have regard to the three tests required by the Regulations as well as the licensing authority (due to the duty under Regulation 7(1)).

Consequently, for all LPAs, the following are important material considerations:

- firstly, is a criminal offence likely e.g. is an applicant when implementing the proposed development reasonably likely to commit a criminal offence under the Habitats Regulations - such as causing harm to bats?

And where this is the case:

- can the three tests can be satisfied e.g. is the eventual granting of a licence likely - so as to permit activities which would otherwise be unlawful?

In other words, the LPA should not grant consent where they suspect a criminal offence might result and where the three licensing tests are unlikely to be satisfied.

The three tests

A licence cannot be granted until the licensing authority is satisfied that:

- the purpose of the intended action (development) is for preserving public health or public safety or for other imperative reasons of overriding public interest including those of a social or economic nature and beneficial consequences of primary importance for the environment

And as long as:

- there is no satisfactory alternative; and
- the action authorised will not be detrimental to the maintenance of the population of the species concerned at a Favourable Conservation Status in their natural range

This means in proposals where bats may be affected, a planning application must provide sufficient information (in the form of a survey and a report on mitigation measures) for the LPA to consider it against the three licensing tests.

The Habitats Directive is transposed into UK legislation through the Habitats Regulations; and licences are issued under:

- In Scotland Regulation 44 The Conservation (Natural Habitats, &c.) Amendment (Scotland) Regulations 1994 (as amended)

Paul Williamson, 67 Hamilton Park South, ML3 0FH

**From:** Planning  
**Sent:** 22 September 2021 15:01  
**To:** Planning  
**Subject:** Comments for Planning Application P/21/0029

Planning Application comments have been made. A summary of the comments is provided below.

Comments were submitted at 3:00 PM on 22 Sep 2021 from Mr Paul Williamson.

## **Application Summary**

**Address:** Land 120M Northeast Of 55 Bothwell Road Bothwell Road  
Hamilton South Lanarkshire

**Proposal:** Erection of two dwellinghouses with associated studio  
flats above attached garage, raised decking at rear and  
formation of access.

**Case Officer:** Jim Blake

[Click for further information](#)

## **Customer Details**

**Name:** Mr Paul Williamson

**Email:**

**Address:** 67 Hamilton Park South Hamilton South Lanarkshire

## **Comments Details**

**Commenter Type:** Neighbour

**Stance:** Customer objects to the Planning Application

**Reasons for comment:**

**Comments:** Dear Sirs

I am also commenting as part of Hamilton Park South Action Group, and have previously objected on 2nd February. This representation is in addition to those representations.

Disagreements with PLANNING STATEMENT submitted by the applicant

Point 1.4 The forestry consultant appointed by the applicant is of the view the poorer quality trees are not worthy of TPO designation.

Response - The trees are classed as category C in the tree report - which are classed as low category trees which can be retained. This seems pretty subjective and also doesn't actually state that they should be removed either. What is to be gained by removing them? The applicant can develop the land. What is the downside of removing them? The area of woodland would have a driveway and 2 houses on it, effectively 'ruining' the

overall character of the woodland area. It would no longer look like natural woodland but instead a small housing estate. In my view this would

1- have an adverse effect on the Character of the Area.

2- have an impact on nature conservation. The trees, shrubland and various wildlife (bats, birds, deer, rabbits, squirrels, and I'm sure there are loads more I have not physically seen) would all be adversely affected by the development. It is naive to assume there will be no adverse effects whatsoever no matter how much care is taken, building work noise alone disturbs wildlife, even if the individual trees the bats roost in for example are retained.

Both of which are valid planning considerations.

Point 1.5 The driveway has been designed to ensure no significant trees are affected.

Response - I would argue once work begins, damage to significant trees is bound to occur. There is at the very least some risk of this. Why take the risk?

Point 1.7 The forestry consultant appointed by the applicant is of the view the development will have no significant impact on the woodland that is of particular merit.

Response - This seems ENTIRELY subjective. The whole woodland area would be better left as it is. The natural habitat is still being affected/reduced.

Point 2.9 The fact that it is not uncommon for 'poor' quality trees to be removed in a TPO area. The council has control over what tree works are undertaken.

Just because it is not uncommon does not mean, in every case it should happen.

If the area of woodland is a small area bounded on all 4 sides (in this case by the road, racecourse, school & hamilton park south flats) it is making this small area even smaller. This reduction should matter. The fact that there are a lot of objections from local residents should be taken into consideration also. In previous incidents where trees were removed from TPO areas, maybe there was no real objections, maybe the area affected was larger or part of larger woodland or wilderness not a very small self contained area.

It does seem that the council planning authority has the final say here - and I think they should base their decision on what is best for the natural environment as the area is a TPO area - keeping the category C trees and shrubland or the building of 2 houses. In my view the buildings will detract from the overall character of the area.

Point 2.10 As noted, from a legal perspective if planning

permission is granted, no further consent will be required for the removal of 'necessary' trees to allow the development to proceed.

Response - As stated in the tree report commissioned by the applicant, trees can be badly damaged by construction activities, and even though there is a 'plan' in place to protect the root system of the high quality trees - once work begins - as stated above - the plan can basically be disregarded. Given that there is no clear indication of a garden for the houses, I think there is a distinct possibility that more trees than indicated will be removed and the garden area will be extended. Especially given that the very first application from Mr Chaudhary was for an access road required so he could undertake tree maintenance. Clearly untrue, as he is now applying to build houses.

The council should bear in mind the likelihood that the developer may deviate from the plan once building commences. If there is a high likelihood this should go against the applicant. How do you determine the likelihood? The applicants previous history must be a factor, as must the lack of garden on the plans.

Point 4.2 The fact that although the trees are covered by a TPO does not necessarily mean they are worthy of retention. The TPO is to give the council control over the woodland to ensure there is no harmful effect on the overall integrity of the woodland. The applicant states the small scale development would have no adverse effect.

Response - A TPO is granted primarily for environmentally aesthetic purposes, and while it does give the council control over the area, this does not mean the council should give planning permission. It means the council has to listen to both sides of the argument and make a decision that is in the best interests of the community and environment.

The development would have have an adverse effect on the overall character of the area. As stated previously, this is a very small self contained woodland area bounded on all 4 sides by development of some kind. Allowing development within the area would definitely have an adverse effect. It would not be natural woodland but a mixture of natural woodland, houses, some form of garden (which has not really been fully outlined in my view - and I suspect will be altered once building begins resulting in more trees being destroyed - by the applicant/proposed developer) and road. There is also the possibility that if planning permission is granted, this could leave to further development in the future - reducing (possibly eliminating) the woodland in the future.

## Conclusion

It seems to me the slightly subjective nature of Tree Preservation Orders means the final decision rests with the council planning department, who need to weigh up

the following.

Reasons not to allow the development to proceed -

1. The effect of character on the area - The area will not look like natural woodland any more. Although the trees scheduled for removal are category C trees which are deemed lower quality, this does not mean they should be removed. Even in the tree report commissioned and paid for by the applicant - it does not state this. It merely states in his 'opinion' the removal wouldn't matter. I'm not sure this is good enough, seems like a judgement call to me. If this is the case, I would always side with the 'keep things as they are' argument.

2. Nature conservation - including the trees and various wildlife (bats, birds, deer, rabbits, squirrels, and I'm sure there are loads more I have not physically seen). At the very least surely there is a risk that the development will be harmful to wildlife and the environment. In fact, I would say with the best will in the world, damage will be done.

4. Loss of Privacy - while the distance between the proposed building and the closest flat is said to be 26m, it looks more like 16m to me on the plans submitted by the applicant - so please check this. Even if it is 26m, this does not make any allowance for the gardens of the proposed development. It looks to me like there is no provision for a garden at all on the plans. I find this slightly hard to believe that a huge detached house would be built with no or minimal garden. In theory the garden could be as close as 2m to the nearest flats. Bedrooms & Living Rooms are the rooms which face onto the woodland.

3. I would also draw particular attention to Point 2.10 As noted, from a legal perspective if planning permission is granted, no further consent will be required for the removal of 'necessary' trees to allow the development to proceed. THIS IS EXTREMELY CONCERNING.

4. I would also like to point out the Tree Report conducted by Keith Logie was commissioned and paid for by the applicant/proposed developer. While there is nothing untrue in the report, quite a bit of the conclusion seems to be stated as 'in my opinion', which is not exactly conclusive a feels like the report is slanted towards being favourable to the person who paid for it. The applicant has had about 6 months to find and commission a chartered forester to support his application. Even then, the report is not exactly a ringing endorsement that the development should go ahead. I am pretty confident if the objectors had 6 months (as opposed to 3 weeks) to refute the report, we could commission a similar report with the same findings but slanted towards a different conclusion.

5. I would also like to point out that if planning permission is granted for 2 houses and a road, this strengthens the applicants case to further develop the



land. The TPO is weakened by having some development already on the land.

A TPO is granted primarily for environmentally aesthetic purposes, I would argue having part of the area developed would be in opposition to the reason the TPO was granted. Basically to protect the character of the area.

Reasons to allow the development to proceed - I can't really see how any development here benefits the community or environment.