

P & EP Committee: 22nd March 2022

ITEM NO. 3

PROPOSAL: Confirmation of Tree Preservation Order 21/00009/TPO

SITE: Dogsthorpe Spinney, Welland Road, Peterborough

REFERRED BY: Head of Planning

CASE OFFICER: Stephen Chesney-Beales - Tree Officer

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RECOMMENDATION: Confirm – Tree Preservation Order 20/00009/TPO

1. DESCRIPTION OF THE SITE AND SURROUNDINGS & SUMMARY OF THE PROPOSALS

Purpose of Report

A provisional Woodland Tree Preservation Order (TPO) 21/00009/TPO at Dogsthorpe Spinney, Welland Road, Peterborough was made and served on 6th October 2021. This was because of the authority becoming aware of proposals to carry out tree felling in preparation for future development on land, where there are trees that it wishes to see retained.

In accordance with best practice the persons interested in the land affected were notified of the provisional TPO. As a result of this process an objection has been received and thus the Committee are required to consider the objection, before determining the confirmation of the TPO, in accordance with para 2.6.2.2 (f) of the Council's constitution.

The main considerations are:

1. The Woodland subject of the TPO is worthy of a TPO in terms of its public visual amenity value?
2. Is the making of the TPO reasonable and justified having regard to the objections raised?

The Head of Planning recommends that the TPO is CONFIRMED without modification.

Site and Surroundings

Dogsthorpe Spinney is located at the eastern end of Welland Road and surrounded by the A47 - Eye Road and the A15 - Paston Parkway. The land to the north is open countryside towards Newborough, to the east is the industrial site including Veolia, to the south is Dogsthorpe and to the west is Paston. Please see **Appendix 1** for a copy of the TPO and **Appendix 2** for the aerial photograph.

Description of Woodland/Tree/s

The woodland spinney is made up of various young and early semi-mature trees and shrub species, which cover the entire site.

2. PLANNING HISTORY

Planning History

There are two old planning applications relating to this site including:

Ref: 90/P0239 Refusal of Planning Permission

Industrial and warehousing housing development, access road and highways alterations

P1058/78 Grant of Planning Permission

Motorway services and petrol filling station including associated motor trades and accesses.

3. PLANNING POLICY

Decisions must be taken in accordance with the development plan policies below, unless material considerations indicate otherwise:

Town and Country Planning Act 1990, Section 198 states

S.198. - Power to make tree preservation orders

(1) If it appears to a local planning authority that **it is expedient in the interests of amenity** to make provision for the preservation of trees or woodlands in their area, they may for that purpose make an order with respect to such trees, groups of trees or woodlands as may be specified in the order.

The Town and Country Planning (Tree Preservation) (England) Regulations 2012

4. CONSULTATIONS/REPRESENTATIONS

Objection

An objection to the TPO was received on 1st November 2021, from an Arboricultural Consultant from Thomson Environmental Consultants on behalf of Al Zahra Investment Ltd raising a number of objections to the making of the TPO, please see **Appendix 3** for details.

The main points of objection, are outlined below:

Point a). - TPO incorrectly served: *The Order is required to be served on the owner of the land as soon as practicable after it is made. Section 329 of the Town and Country Planning Act 1990 is clear in setting out the method of serving an Order. In respect of our client, Al Zahra Investment Ltd (the person(s) interested), the requirement of Section 329(1)(d) is:*

In the case of an incorporated company or body, by delivering it to the secretary or clerk of the company or body at their registered or principle office or sending it in a prepaid

registered letter, or by the recorded delivery service, addressed to the secretary or clerk of the company or body at that office.

The Order has not been served on the landowning company's office. There are no copies of the Order visible on our client's site. There were notices on the adjacent land belonging to Peterborough City Council. The Order was sent by e-mail and it has therefore not been served in accordance with the Act.

The Council's Tree Officer considers the TPO was served correctly and that all reasonable attempts were made to identify and notify those persons interested in the land. To illustrate this point it can be confirmed that:

- A Land Registry search was undertaken for the land in question and where registered the order was served on relevant owners.
- A copy of the TPO was also 'posted' on the site of the TPO in a prominent location and photographic evidence recorded.
- A copy of the Order was sent to Mr Rafik Halani, who had identified himself to the Council as the owner of the property. This communication was via email and a hard copy sent to an address in Madagascar, supplied by Mr Halani, the morning the TPO was made.
- Once made aware of Zahra Investment Ltd's interest in the land copies of the TPO were served by hand to the Company's address, namely 51 Audley Gate, Peterborough and to Mr Halani's (Company Director) UK address, at 105 Newark Avenue, Peterborough on 11th November 2021.

On numerous occasions, when asked during telephone conversations and via email Mr Halani did not provide an address and did not inform the Council that he was a Director of the above Company which had an interest in the land covered by the TPO. The Council only became aware of this fact, on receipt of the letter of Objection. Therefore, the Council was not in a position to serve the Order on the Company at the onset, as suggested.

Point b). – TPO incorrectly drafted: *The Order has chosen to utilise the 'woodland' classification to designate trees protected by the Order.*

However, a significant proportion of the area referred to as W1 is within the ownership of Peterborough City Council and the use of this land is unknown and may not come under woodland management practices.

If the Order is meant to only cover our client's land then it needs to be redrawn correctly to show the ownership boundary (which is a matter of public record at HM Land Registry). The enclosed plan showing our client's land edged green should assist in that regard.

The Council's Tree Officer considers the TPO was correctly drafted, despite the fact that Peterborough City Council, together with other parties own small sections of the area protected by the TPO, which has been designated as a 'Woodland' TPO because of its wooded nature.

The TPO was made to protect the wooded area as one single landscape component, despite the shared land ownership, which has no bearing with regard to the TPO designation. The Council is at liberty to TPO any tree/s or woodland it considers maybe under threat and which offer public visual amenity value.

The Woodland TPO, as plotted reflects the area covered by trees that forms Dogsthorpe

Spinney and is not intended to solely represent the objectors land ownership and thus redrafting of the order is not required.

Point c). - Not expedient to make the Order: *As the Council well knows, the subject area is covered by the Forestry Act 1967 within which a licence is required for tree felling other than certain exemptions.*

The Order does not materially impact the protection of the trees as any application for works must be considered and submitted to the Forestry Commission for consideration. Peterborough City Council would be consulted as part of the Felling Licence application.

The Council's Tree Officer felt it was expedient to serve the TPO to ensure the trees forming the woodland spinney were protected and retained. It is considered that the TPO offers greater levels of protection to the trees as the regulatory control imposed by the Forestry Act would have still allowed up to 5 cubic metres of timber to be felled each calendar quarter, trees to be lopped and topped and the removal of smaller diameter trees. Once a TPO has been made, this negates the need to comply with the Forestry Act. The Council consulted with the Forestry Commission on this matter in August, prior to considering making the TPO.

5. ASSESSMENT OF THE PLANNING ISSUES

Assessment of Trees

Government guidance recommends LPA's develop ways of assessing the 'amenity value' of trees in a structured and consistent way.

To this end PCC use an assessment criteria which considers the following:

Visibility, the trees subject of the TPO are clearly visible by the public from publicly accessible viewing points, displaying significant visual amenity value and contributing to the local environment, and have;

Individual Impact, due to their size and form, that has a visual impact on the landscape character of the area, and a;

Wider Impact, on the surrounding area, by contributing significantly to the character and appearance of the local environment and landscape, together with their intrinsic value.

Summary of Planning Issues

The objections to the TPO are highlighted for consideration above and a copy of the objection letter is available in **Appendix 3**. The Council's Tree Officer has responded to the objections, as set out above.

The Council's Tree Officer believes it was expedient to serve the TPO and considers the TPO to be valid and that it was served correctly, given the circumstances, as stated above. The Council have offered Al Zahra Investment Ltd, via Thomson Environment Consultants to actively engage in any pre-planning application discussion the objector may wish to have with regard to the future potential development of the site in respect to the constraint imposed by trees. It should be noted that if a future planning application is made, considered and approved, any planning consent would override the TPO, as the TPO would have had to have been considered alongside the application, as a material consideration, to the proposed development in question.

6. CONCLUSIONS

The Woodland subject of the TPO, shown in **Appendix 1**, is considered to offer significant, public visual amenity value from the surrounding area, as shown by the aerial photograph in **Appendix 2**. The woodland spinney has been assessed and is considered to be worthy of TPO status and under threat from future development. Serving of the TPO was considered appropriate and reasonable in the circumstances, in order to safeguard the public amenity value of the woodland, its intrinsic value and the contribution it makes both to the immediate area, the wider landscape and environment as a whole. It is therefore recommended the TPO is confirmed without any modifications.

7. RECOMMENDATION

The Head of Planning recommends that the TPO is CONFIRMED without any modifications.

Copy to Councillors:
Cllr Andrew Bond
Cllr Sandra Bond
Cllr Bryan Tyler

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