

P & EP Committee: 16th August 2023

ITEM NO. 3

PROPOSAL: Confirmation of Tree Preservation Order 23/00004/TPO

SITE: Land at Rhine Avenue, Peterborough, PE2 9SN

REFERRED BY: Head of Planning

CASE OFFICER: Stephen Chesney-Beales - Tree Officer

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RECOMMENDATION: Confirmation of Tree Preservation Order 23/00004/TPO with modifications

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

Purpose of Report

A Tree Preservation Order (TPO) 23/00004/TPO Land at Rhine Avenue, Peterborough was re-made and served on 16th March 2023 to show the individual trees subject of the TPO within each of the groups G.1 to G.3, to ensure there was no doubt which trees were protected in the gardens of the new houses currently being built on the site. The original TPO 22/00001/TPO was made on 12th September because of the threat from the proposed development of the site.

The TPO has been the subject of consultation and because objections have been received, 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 three groups of trees G.1, G.2 & G.3 subject of the TPO are worthy of a TPO in terms of their 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 with modifications to amend the species of one of the trees within Group G.2 from Norway Maple to Lime, see **Appendix 1** for details.

Site and Surroundings

The land at Rhine Avenue is currently a small Vistry Partnerships (Vistry) housing development, of 12No dwellings, located to the east of the southern end of Mosel Walk footpath and immediately west of No.5 Rhine Avenue, Peterborough, PE2 9SQ. Please see the TPO plan within **Appendix 1** for reference.

Description of Groups G.1, G.2 & G.3

The group G.1 is made up of 2No Sycamore, 2No Norway Maple and 1No Norway Maple 'Crimson King' (with purple foliage), G.2 is made up of 2No Norway Maple and 1No Lime (as modified) and G.3 is made up of 2No Norway Maple. All the trees are semi-mature/early mature in age and all three groups are located along the southern boundary of the site.

2. PLANNING HISTORY

Relevant Planning History

One recent planning application relating to this site includes:

22/00293/FUL Land Off Mosel Walk, Sugar Way, Peterborough

Erection of 12 dwellings with access, car parking, landscaping and other associated works

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

Two objections have been received with regards to the making of the above TPO.

One, from Mr Smith of No.251 Oundle Road and the second, from Mr Shipton of 257a Oundle Road.

Mr Smith's objections

An e-mail raising 'observations' with regards to the TPO was received on 28th March 2023, from Mr Smith of No.251 Oundle Road, the property is located immediately adjacent to the southern boundary of the site and group G.3 of the TPO. Mr Smith wanted his e-mail to be considered as an 'objection' to the making of the TPO, please see **Appendix 2** for details.

The Council's Tree Officer responded to Mr Smith's 'observations' by way of e-mail on 16th May 2023, please see **Appendix 3** for reference.

The main points of observation/objection, are outlined below:

I have lived at 251 Oundle Road for over 10 years and prior to that 251 Oundle Road for over 20 years. Our rear fence boundaries the Rhine Avenue site and the two remaining Norwegian Maple trees.

You have already allowed two other Norwegian Maples to be cut down and the roots removed. The two remaining both over hang our fence line and in the last 30 years no one has even approached us regarding maintenance of these trees.

Both I and my wife would like the remaining two Norwegian Maples removing and more sympathetic and urban friendly trees to be planted in their place eg hornbeam, rowan etc

Please take this email as a written request for the removal of these trees

The Tree Officer informed Mr Smith, the Council did not allow the felling of two Norway Maple prior to the making of the TPO, as the trees at the time of felling were not protected, therefore, the Council had no control with regards to the trees.

The Tree Officer confirmed the remaining trees on the site had been protected because of their amenity value and because they provide some screening and a natural break between the long gardens of the properties on Oundle Road and the new development between Mosel Walk and Rhine Avenue.

The Tree Officer advised Mr Smith that if he wished to see the trees removed or pruned an application would have to be made, by him or Vistry, and that now may be the best time to make contact with Vistry to request that the trees are pruned, prior to the sale of the new houses. He also advised that Mr Smith should make contact with Vistry, if he felt the trees were a nuisance and he had concerns about the condition and maintenance of the trees and the potential of future branch failure, which may cause damage to his property.

The Tree Officer recently visited the site and was informed that a small dead branch had fallen from the larger Norway Maple in group G.3 penetrating the roof covering of one of Mr Smith's sheds, located beneath the crown of the tree in question.

The owner of the land/tree is responsible for any such damage and has a duty of care under the Occupiers' Liability Act to ensure damage of this kind does not occur. The Tree Officer is aware that Mr Smith made contact with Vistry but has not had a response to date.

Please note the Additional Information 18 July 2023 from Mr Smith and the Tree Officer's response.

Mr Shipton's 'objections'.

A letter raising concerns with regards to the trees protected by the TPO were received on 29th March 2023, from Mr Shipton of No.257a Oundle Road, the property is located immediately adjacent to the southern boundary of the site and two of the trees within group G.2. Mr Shipton was not clear if he wanted his concerns raised as an 'objection' to the making of the TPO. However, the Council's Tree Officer felt it prudent to include the matter in this report for Committee's attention and consideration. Please see Mr Shipton's letter and e-mails **Appendix 4**, for reference.

The Council's Tree Officer responded to Mr Shipton's letter by way of e-mail on 15th May 2023, and subsequent e-mails. Please see **Appendix 5**, for reference.

The main points of 'objection', are outlined below

The trees mentioned in your letter are immediately behind our premises and have been of concern to us over the years. We have had branches falling onto our workshop and causing damage, which prompted us to contact British Sugar, the previous owners, who completely ignored our phone calls and letters, one being hand delivered. Consequently, we hired a professional tree surgeon to prune the branches overhanging our property, even so we still have branches falling onto the roof during high winds and have had to replace four damaged tiles this year alone. The trees have grown so much since the workshop was built that I am now very concerned about the roots damaging my foundations.

My only concern was that the trees are maintained to keep them in a safe condition. If the TPO prevents them being touched in any way whatsoever then yes! I would like my concerns raised as an objection, to make sure that whoever is responsible for them is required to keep them in a safe manner.

The Tree Officer visited Mr Shipton and discussed his concerns with regards to the trees and advised that if he wished to see the trees managed by maintaining the overhanging branches, an application would have to be made, by him or Vistry, the same as he had advised Mr Smith.

Again, the Tree Officer gave the same advice to Mr Shipton with regards to contacting Vistry, if he felt the trees were a nuisance and he had concerns about the condition and maintenance of the trees and the potential of future branch failure, which may cause damage to his property, including the fabric of the adjacent workshop/building. This would include any damage to foundations.

The Tree Officer informed Mr Shipton that the only 'requirement' a tree owner has to maintain a tree in a safe condition, is by way of their duty of care under the Occupiers' Liability Act 1984 (OLA), where the law outlines an occupiers' responsibility, known in law as 'the duty of care', to take reasonable care to avoid acts or omissions which he or she could reasonably foresee may result in harm or injury. When an occupier fails to exercise his or her responsibility the result may be a claim for negligence.

The Council would encourage the sound arboricultural management of the tree however it is not in a position 'to make sure' or 'enforce' the OLA or the maintenance of tree/s protected by a TPO. The TPO gives the Council the opportunity to protect the retention of trees and have control over the works to 'manage/maintain' the tree/s in the future.

5. ASSESSMENT OF THE PLANNING ISSUES

Local Authorities are guided by Government guidance at: <https://www.gov.uk/guidance/tree-preservation-orders-and-trees-in-conservation-areas#making-tree-preservation-orders>

At PCC an assessment criteria has been developed and covers the considerations in Point 2 above and detailed below:

Visual Amenity and Visual Impact as a Group

Government advice states - The extent to which the trees or woodlands can be seen by the public will inform the authority's assessment of whether the impact on the local environment is significant. The trees, or at least part of them, should normally be visible from a public place, such as a road or footpath, or accessible by the public.

The Tree Officer considers the trees subject of the TPO are clearly visible by the public from publicly accessible viewing points, including from parts of Oundle Road, Mosel Walk footpath, Rhine Avenue and therefore, display significant visual amenity value and visual impact as groups and offer some screening and a natural break between the long gardens of the properties on Oundle Road and the new development between Mosel Walk and Rhine Avenue.

Tree Health Considerations

Tree health considerations include visual health, structure, growth, foliage condition, size, past management, future maintenance, future visual impact, maturity, life expectancy and presence of fungi.

The Tree Officer considered the trees subject of the TPO to be of good health and condition generally despite some deadwood in the crowns of the trees with regards to the above attributes for their age as mature specimens with less than 40 years life expectancy and with no obvious signs of fungi present, at the time of assessment.

Impact Considerations

Impact considerations on the public Highway, services, on walls or buildings.

The Tree Officer considered the impact on the above first three features to be low and high on the later, as there are a number of buildings/structures – workshops/sheds on or adjacent to the boundary that may be impacted upon by the trees subject of the TPO.

TPO Serving Procedure

The Tree Preservation Order (TPO) 23/00004/TPO Land at Rhine Avenue, Peterborough was re-made and served on 16th March 2023 to show the individual trees subject of the TPO within each of the groups G.1 to G.3, to ensure there was no doubt which trees were protected in the gardens of the new houses being built on the site. The original TPO 22/00001/TPO was made on 12th September because of the threat from the proposed development of the site.

A TPO Assessment was carried using the PCC criteria on the trees the subject of the TPO and the TPO made accordingly.

Mr Smith and Mr Shipton's objections have been considered and responded to above.

6. CONCLUSIONS

The trees subject of the TPO are considered to offer significant public visual amenity value to the site and the surrounding area. The trees have been assessed and are

considered to be worthy of a TPO and remain under threat from development pressures and future mis-management, therefore, it is recommended that the TPO is confirmed with modifications to amend the species of one of the trees within Group G.2 from Norway Maple to Lime, see **Appendix 1** for reference.

7. Recommendation

The Head of Planning recommends that the TPO is CONFIRMED with modifications, as stated above.