

P & EP Committee: 23rd November 2023
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Item No.

PROPOSAL: Confirmation of Tree Preservation Order 23/00007/TPO

SITE: Land off, Newborough Road, Paston, Peterborough, PE4
7AA

REFERRED BY: Head of Planning

CASE OFFICER: Stephen Chesney-Beales - Tree Officer

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RECOMMENDATION: Confirmation of Tree Preservation Order 23/00007/TPO without modifications.

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

Purpose of Report

The Tree Preservation Order (TPO) - 23/00007/TPO Land off Newborough Road, Paston, Peterborough was made and served on 13th June 2023 to protect four individual trees, 3 Oak & 1 Ash and a group of four trees consisting of 3 Oak & 1 Lime because the trees were considered to be under threat from development.

The TPO has been the subject of consultation and because an objection has 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 trees T.1 to T.4 and group G.1 the 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 without modifications.

Site and Surroundings

The site and location of the trees is development land located to the west of the Newborough Road, located on the edge of Paston Reserve adjacent to the new school and opposite new housing on Manor Drive and open countryside to the east of Newborough Road. The trees subject of the TPO are located at the north-eastern corner of the site and along the eastern boundary with Newborough Road, south to the residential property Elmcroft and in the rear gardens of Ashdene & Mayville.

Please see the TPO plan within **Appendix 1**, for reference.

Brief description of trees

The Oaks T.1 & T.2 are early mature specimens, typical of the species and appear to be in good to moderate physiological and structural condition with no apparent health problems or structural defects.

The multi-stemmed Ash T.3 is an early mature specimen, typical of the species, in good physiological condition, possibly with early signs of Ash Dieback (ADB), its structural condition appears to be of average condition.

The Oak T.4 is a large, mature specimen typical of the species, which appears to be in good to average physiological and structural condition with no apparent health problems or structural defects. The trees within group G.1 consist of 3 Oak & 1 Lime, all are mature specimens, typical of the species, and considered to be in good physiological and structural condition with no apparent health problems or structural defects.

Please see the photographs in **Appendix 2**, for reference.

2. PLANNING HISTORY

Current Relevant Planning History

A current Planning application relates directly to the trees subject of the TPO.

23/01102/REM Land west of Newborough Road, Paston Reserve Paston, Peterborough is a Reserved matters application for access from Manor Drive, together with the appearance, layout, scale and landscaping for Phase 3 of Paston Reserve development to comprise of 100 dwellings pursuant to outline permission 91/00001/OUT varied under 15/01771/WCPP.

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

A letter raising a number of objections with regard to the making of the TPO was received on 11th July 2023, within the objection period, from Eversheds Sutherland (International) LLP (Eversheds) on behalf of their clients (Objectors) Taylor Wimpey UK Limited, Bedfordia Developments Limited and Old Road Securities Limited. The objection in brief is to the making permanent of the TPO on the basis that the statutory basis for making such an Order (as set out in section 198 of the Town and Country Planning Act 1990) has not been satisfied in relation to the trees set out in the TPO. A subsequent letter was received on 25th August 2023, both letters were responded to via e-mail by the Tree Officer on 24th July and 12th October 2023.

Please see **Appendix 3**, for reference.

The Council's Tree Officer considered the objections in the above letters which in brief are set out below in italics, with reference to the Sub-sections within Section 2, of the first letter dated 11th July and all Sections/sub-sections within the second letter dated 25th August:

Please note: The Tree Officer will respond to the points raised with regards to the making of the TPO and the objections raised accordingly, but will not respond to matters relating to the current planning application, as this is a matter for the Planning Case Officer and the Committee, should the matter come before the P&EP Committee in the future for approval.

The Tree Officer's response to each point is in bold below.

Letter & e-mail - 11th July 2023

2.0. Please note, the e-mail with letter attached from Eversheds dated 11th July points out that 'it appears that the correct notification of the making of the TPO does not appear to have been served on the Objectors despite their interest in the site'.

The TPO (Order) was sent recorded delivery to each of the addresses of the three Objectors, as listed with Companies House and registered with the Land Registry, in order to comply with Regulation 5 of the Town and Country Planning) (Tree Preservation) (England) Regulations 2012. A 'body' at each of the addresses must have received a copy of the Notice, as there have been no returns recorded or received by the Council to date from Royal Mail.

2.1.

The Objectors - Taylor Wimpey UK Limited, Bedfordia Developments Limited and Old Road Securities Limited have an interest in the adjacent site which benefits from outline permission 91/00001/OUT varied under 15/01771/WCPP and in respect of the wider development with regards to the reserved matters approval 16/01197/REM.

Noted.

2.2.

That the Council's Tree Officer did not raise an objection to the above applications.

Noted, but not considered relevant with regards to this matter, see below response to 2.3.

2.3.

To the extent that the Council considers that there is a further need to control development in the vicinity of the trees subject of the Order.

The Order was made because the Council considered the trees subject of the Order were under threat from development, as a pre-application submission for the proposed development of the site showed most of the protected trees, except trees T.3 & T.4, being removed together with most of the roadside hedge, adjacent to the Newborough Road north of Elmcroft. Therefore, the approved planning applications and conditions referenced in Sections 2. Sub-section 2.1 to 2.3 of the Objectors letter, would not have protected the retention of the trees in question, should a decision have been made to remove them.

2.4. & 2.4.1 to 2.4.5

In relation to the amenity value of the trees subject of the TPO: including the individual tree T.1 , T.2 & T.4 all of which are considered of moderate value with arboricultural and landscape qualities and are currently under good management with no actions required to be taken in respect of their ongoing good management; T.3 which is considered of low value with landscape qualities only, it is located within a group of trees suffering from Grade 2 ash die back and has a predicted remaining life of 10+ years and it is at risk of future decline due to infection; and Group G.1 which comprises three trees of moderate value with arboricultural and landscape qualities and are currently under good management with no actions required to be taken in respect of their ongoing good management and a fourth tree which is considered to have a life expectance of less than 10 years and cannot realistically be retained as a living tree in the context of the current land use for longer than this time.

The Council does not agree with the assessment of the amenity value of the trees subject of the Order. All the trees were assessed and considered worthy of protection considering current Government guidance.

With regards to T.3, it may be located within a group of trees considered to be suffering from ash die back (ADB), however, T.3 has not been specifically identified as suffering from ADB, it may be that T.3 is resistant to ABD?

It would appear that the trees within Group G.1 have not been assessed correctly, as all the trees have a life expectancy of at least 40yrs. It would seem that the declining roadside Oak on Manor Drive, is being considered, however, it is not within G.1. The Council does not agree or note any evidence of recent management that suggests the trees subject to the Order or otherwise, are 'under good management', rather, it would appear that no management has been undertaken on the trees on site, especially over and adjacent to the public highway, especially with regards to the above Oak, adjacent to Manor Drive.

2.5.

In relation to the trees public visual amenity, the trees do not appear to have any cultural or historical significance and with regards to BS 5837:2012 British Standard some of the trees have moderate arboricultural and/or landscape qualities.

The above Standard BS5837:2012 is British Standard BS5837:2012 Trees in relation to design, demolition and construction - Recommendations, therefore, it has no relevance when considering or assessing trees worthy of consideration for protection by a TPO, necessarily, as its purpose, as stated, is for assessing tree/s in relation to design, demolition and construction.

Please note, the OS Plan from 1886 shows a copse of trees at the corner of Manor Drive and Newborough Road (what was Paston Ridings), at the location of Group G.1, which may then be considered to have some historical context or significance locally and therefore, with some cultural reference to the past?

2.6.

In relation to Annex 2 of the Standard, the trees subject of the TPO cannot be considered particularly good examples of their species individually or as a group with regards to both their arboricultural/landscape qualities because of their impaired condition or limited visual contribution to the wider locality.

Please note the response above.

2.7.

In relation to the trees subject of the TPO and the above, the trees cannot be said to be of high value to local amenity such that the statutory grounds for making a TPO has been met. The trees are considered currently under good management with the exception of one of the trees in Group 1 which has a life expectancy of circa less than 10 years and which is not contributing to the amenity value of the area.

Please note trees subject of a TPO, do not have to be of 'high value', but to have public visual amenity value, as set out in the above Government guidance. With regards to the 'one tree in Group 1' which has a life expectancy of circa less than 10 years, please see the response under 2.4 & 2.4.1 to 2.4.5 above.

Letter & e-mail - 25th August 2023

1.

Not all members of Objectors - Taylor Wimpey UK Limited, Bedfordia Developments Limited and Old Road Securities Limited appear to have been served with notice of the Order being made in accordance with regulation 5 of the Town and Country Planning) (Tree Preservation) (England) Regulations 2012 despite having an interest in the land affected by the Order and that therefore the Council does not appear to have complied with the statutory requirements.

Please note the first response above, under 'Letter & e-mail - 11th July 2023'.

2.& sub-sections 2.1 to 2.4

References T.3 Ash and information and references to ash dieback (ADB) by the Objectors arboriculturist.

The information is noted, however, T.3 remains healthy and is not in a dangerous condition and continues to offer public visual amenity value and is considered worthy of protection.

3.

Correction with reference to sub-section 2.1.4 of the Objectors letter dated 11th July, refer to T.4 (not T.2).

Noted.

4.& sub-sections 4.1 to 4.5

References photographs attached to the above letter, supporting the Objectors arboriculturist opinion in relation to tree health and further comments with regards to detritus, soil levels and growing space around trees and the trees subject of the Order.

The information is noted, however, trees can be very adaptable in certain situation, as demonstrated by the trees the subject of the Order in particular, as they are considered healthy and not in a dangerous condition, and continue to offer public visual amenity value and are considered worthy of protection.

5.

The Objectors agreed that the trees subject of the made Order have visual amenity value, there are also concerns around highway safety given their location and the potential for collisions. There are no signs or barriers protecting the trees.

Noted. With regard to 'highway safety', the Tree Officer is not aware of any LPAs or private landowners that provided signs and barriers to protect their roadside trees, in ordinary circumstances, to prevent potential collisions.

6.

The Objectors give notice that all the trees and vegetation that overhang the highway should be crown-lifted to at least 5.2m, as well as being cut back from the edge of the carriageway to allow clearance for wing mirrors. This includes car parking bays.

Noted, however, the Objectors are responsible for the trees on their land and any obstruction to the public highway, if they wish to carry out any works to the protected trees, then an application (or notice) will be required, as considered appropriate in the circumstances, see Section 8 below for reference.

7.

The Objectors give notice that trees and vegetation that overhang cycleways should be crown lifted to 3m above ground level and all footways and footpaths should be crown-lifted to at least 2.4m and cut back to ensure the footpath/way is at least 1.4m in width.

Noted, however, currently there are no cycleways, footways or footpaths, a part of the public highway, adjacent to the trees subject of the TPO, and in any case please reference the above response to Section 6.

8.

In relation to the future development proposals, Eversheds' suggestion would be for the Objectors and the Council to engage in constructive discussions or mediation regarding the trees and the development proposed so that a suitable arrangement can be agreed without the need for the Council to pursue confirmation of the Order.

Should the Order be confirmed, the Objectors highlight the obligation for the Council to respond within the statutory 8-week period to a request for consent to carry out works to the trees. It is therefore in all parties' interests to find a mutually agreeable solution.

The Council is currently in the process of considering the current development proposals in discussions with the applicant, however, the proposals to date are not considered acceptable with regard to parts of the development encroaching within the root protection areas (RPA's) of a number of the trees subject of the Order, therefore, it is considered necessary to maintain the protection to the trees in question.

The Council is fully aware of its obligations in dealing with Order Tree work applications.

The Council does not agree with the Objectors views on the matter of the trees amenity value or the expediency of the making of the Order.

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 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. It also, states that it may be expedient to make an Order if the authority believes there is a risk of trees being felled, pruned or damaged in ways which would have a significant impact on the amenity of the area. But it is not necessary for there to be immediate risk for there to be a need to protect trees. In some cases, **the authority may believe that certain trees are at risk as a result of development pressures** and may consider, where this is in the interests of amenity, that it is expedient to make an Order.

The Tree Officer considers all the trees subject of the Order have amenity value and are worthy of retention with regard to the current development proposals.

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 considers all the trees subject of the Order to be of good, moderate or average health and condition with regards to the above attributes for their ages, and with greater than 40 years life expectancy, except for T.3 Ash which was given less than 10 years life expectancy, due to possible infection with Ash Dieback (ADB). None of trees in question had any obvious signs of fungi present, at the time of the assessment.

Impact Considerations

Tree impact considerations on the public highway, services, on walls or buildings.

The Tree Officer considered the impact on all of the above features to be low, except for the public highway (carriageway) which is considered high as some of the trees subject of the Order, are within 6m of the edge of Newborough Road.

TPO Serving Procedure

The Tree Preservation Order (TPO) 23/00007/TPO Land off Newborough Road, Paston, Peterborough was made and served on 13th June 2023 to protect four individual trees 3 Oak & 1 Ash and a group of four trees consisting of 3 Oak & 1 Lime because the trees were considered under threat from development.

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

Taylor Wimpey UK Limited, Bedfordia Developments Limited and Old Road Securities Limited's objections have been considered and responded to above.

6. CONCLUSIONS

All the trees subject of the TPO, shown in **Appendix 1**, are considered to offer 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, therefore, it is recommended that the TPO is confirmed.

7. Recommendations

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

Copies to Councillors- Cllr Andrew Bond
Cllr Sandra Bond
Cllr Bryan Tyler