

# Forest Heath District Council

**DEVELOPMENT  
CONTROL  
COMMITTEE**

**5 FEBRUARY 2014**

**DEV14/102**

## Report of the Head of Planning and Regulatory Services

### **TREE PRESERVATION ORDER – FOREST HEATH DISTRICT COUNCIL – TREE PRESERVATION ORDER TPO 2, 2013 – LAND AT MIDDLE COVERT, STATION ROAD, LAKENHEATH**

#### **Synopsis:**

A provisional tree preservation order (TPO) was served on woodland at Middle Covert, Station Road, on 17 September 2013. The TPO was served to protect woodland that forms the eastern boundary and an important gateway to the village of Lakenheath. The statutory consultation period for the TPO expired on 20 September, 2013. Six representations, four in support and two objections have been received.

It is recommended that Members **confirm** the TPO without modifications.

#### **Commentary:**

1. The District Council's standing orders allow for the making of provisional Tree Preservation Orders by your Officers, subject to reporting such action at Planning Committee.
2. The subject of this TPO is woodland located to the south of Station Road in Lakenheath on land known as Middle Covert. The woodland lies to the east of the village forming the village edge and as such forms an important gateway to the village. The woodland also forms an attractive backdrop to the properties on 'Woodlands', 'Barr Drive' and 'Birch Crescent' and contributes significantly to the visual amenity of the locality. There has been a woodland present in this location since at least the late 1880's and this is illustrated on historical maps. This TPO is to stop the precipitous removal of trees on an ad-hoc basis and not to curtail legitimate woodland management which might be necessary and desirable further to the appropriate management plan and consent being in place.

3. Six representations have been made in relation to the tree preservation order. There are four letters of support which state:
  - work in the woodland has been undertaken during the bird breeding season and this has had a detrimental affect on the number of birds visiting the woods.
  - Work undertaken in the wood has been destructive including the coppicing of many trees and clearing the undergrowth and removing habitat
  - The woods are a unique and pleasant entry into the village
  - The woodland is a significant wildlife corridor and habitat
4. A letter of objection from the owner of the site has been received. The main areas of contention are:
  - That there are now four bodies (government, Forestry Commission, Local Authority and Local residents) whose requirements the owner has to satisfy in managing the wood and there are a number of conflicts in doing so.
  - That the owner is supporting government policy on sustainable energy by managing this as a working wood
  - That work is correctly licenced and compliant with Forestry Commission 'laws' it would be wrong to stop operation of a working wood
  - The reason for the order should be explained by the local planning authority
  - The woodland has only undergone felling twice in the last 30 years and this is not a threat to the environment or the woodland
  - The major threat to the wood is the actions of persons trespassing, vandalising, rubbish tipping and abusing the wood
  - Local residents have no regard for the law relating to this land
  - Reclassifying the wood as an amenity is not in the spirit of the 'Sustainable Energy Initiative'
  - The council allowed the adjacent housing estate to build on land which is shown on maps to have been woodland and farmland

- If the TPO is confirmed the excessive liability costs to the owner will mean that local people will lose all access to the woods
  - The council are prepared to sacrifice the environment for sports facilities; 8 years ago there was an arrangement to place a football pitch on the land.
5. A letter of objection has been received from an arboricultural consultant acting as an agent for a developer. The representation seeks to modify the TPO from a woodland TPO to an order that protects individual trees. The main points are:
- That the objection is not an objection to the principal of having a tree preservation order on the site but an objection to the use of a woodland tree preservation order because this will lead to uncertainty when looking at potential layout design as part of the planning process
  - The site is allocated within the Strategic Housing Land Availability Assessment (L28) and therefore there is a presumption in favour of development.
  - A tree survey has been undertaken of the site that identifies trees that are worthy of a tree preservation order and of retention on site as part of a sustainable development. Any other trees on the site should not be seen as a constraint to development
  - The tree preservation order should be modified to protect only those trees identified in the arboricultural consultants tree survey so that future development can be designed and planned with certainty and to avoid a protracted, uncertain and expensive design process with no set constraints
  - The woodland has been in good silvicultural management and not at risk from being felled. DCLG guidance suggests that it is not expedient or appropriate to make a TPO in such circumstances
6. This tree preservation order was made further to a number of reports by local people that trees were being felled within the woodland area. Officers liaised with Forestry Commission Officers with regard to the work that was being undertaken. The tree preservation order was made by the council because it was considered to be the most appropriate way to control the felling of trees in this woodland. The restrictions imposed by the TPO do not conflict with the interests of the various bodies who have an interest in the future retention of the woodland, and the Council work closely with the Forestry Commission where appropriate permissions are required for woodland management.

7. The woodland tree preservation order is not intended to hinder beneficial management of the woodland but to curtail the felling of trees on an ad hoc basis. Sustainable management of the woodland subject to the necessary consent would be welcomed.
8. There is no evidence that the work that has been undertaken within the woodland is unauthorised and this is not the reason for the tree preservation order. There is no current felling licence for this woodland. A previous FC licence (Application Ref: 017/263/10-1) was implemented by the current owner and expired in February 2013. The Forestry Commission have commented that they visited the site during felling and destumping operations and asked the contractor to stop works as the contractor had come close to the permitted amount. Whilst management of the woodland would be supported, the evidence suggests that the operations within the woodland have been focussed on the clearance of large sections of the woodland which threaten the integrity of the woodland as a whole. This is supported by the tree survey (WP2) submitted by the owner/ arboricultural agent which shows most of the significant trees located to the edge of the area. It is the threat to the wood that has instigated the serving of the TPO
9. The reason for the order was included in the tree preservation order papers that were served on the owner of the woodland. This is replicated below:

*This woodland forms the eastern boundary to Lakenheath and as such is an important gateway to the village. The woodland also forms an attractive backdrop to the properties on 'Woodlands', 'Barr Drive' and 'Birch Crescent' and contributes significantly to the visual amenity of the locality. There has been a woodland present in this location since at least the late 1880's and this is illustrated on historical maps. This TPO is to stop the precipitous removal of trees on an ad-hoc basis and not to curtail legitimate woodland management which might be necessary and desirable further to the appropriate management plan and consent being in place.*

10. The security arrangements for the site remain the responsibility of the owner of the woodland and any concerns regarding trespass or criminal damage should be directed to the Police.
11. In serving the tree preservation order on the woodland, the Council has not reclassified the woodland (which has been present on the site since 1885 – WP3) but is acknowledging the value of the woodland to the community and residents of Lakenheath who consider this woodland to be an important asset as illustrated in the letters of support for the TPO. An amenity evaluation has been completed (WP4). The Tree Evaluation Method for Preservation Orders (TEMPO) report indicates that the

woodland merits protection. The visual amenity of the trees is recorded in the tree report submitted by the tree consultant and this records that most of the trees make a moderate contribution to visual amenity scoring most of the individual trees identified on the periphery of the site as BS5837:2012 category B – defined as trees of moderate quality with an estimated remaining life expectancy of at least 40 years (WP2).

12. That development has been constructed on adjacent woodland or farmland through the normal planning process does not affect the status of this land, or of the validity of protecting the woodland
13. The presence of the tree preservation order does not affect the responsibility and the duty of care that the owner has to keep the land and trees in a safe condition.
14. The proposal for a football pitch was in relation to land south of the woodland TPO and not in the designated area. This would have been a lease from the owner to the Parish Council.
15. The objection to the use of a 'woodland' tree preservation order is unfounded. The agent who has made the objection has also undertaken a comprehensive tree survey. The purpose of the tree survey is reported to be 'to highlight the important individual trees associated with the site. The survey shows individual trees located on the periphery of the site and shows the remainder of the site as 'Area of woodland.' The term woodland most accurately describes the current use of the site. The use of 'woodland' TPO is most appropriate to protect the integrity of actively managed woodland.
16. That the site is included in the Strategic Housing Land Availability Assessment (SHLAA)(L28) is a matter of fact. The primary role of the SHLAA is to: identify sites with potential for housing. The Assessment is an important evidence source to inform plan-making, but does not in itself determine whether a site should be allocated for housing development. The Council are currently at the 'issues and options stage' of allocating sites in the District and there is no certainty that this site will be included in the plan when it is adopted.
17. The tree preservation order has not been made to prevent legitimate development of the site but to protect the site assets and to ensure the trees and woodland are considered as a material matter in any proposal for development that may come forward in the future.

### **Finance/Budget/Resource Implications:**

18. Works to or removal of a tree or trees covered by a TPO will require the formal consent of the local planning authority before any

work can be carried out. Currently all such applications are submitted to the local planning authority and do not attract a fee. The Council's Planning Services and Arboricultural Officer will deal with subsequent applications arising as a result of the TPO without any additional fee income. There may also be appeals should TPO consent be refused.

19. Should an application for works to a preserved tree (or for its removal) be refused, the local planning authority may in certain circumstances, be liable to pay compensation to the affected property owner, should the trees cause damage to a property. Such claims are, however, rare and, in this instance, considered unlikely given the health and location of the woodland.

### **Environmental Impact and Sustainability**

20. Removal of any trees, which are considered to be worthy of protection in the public interest, would detract from the visual amenity of the local environment and in particular the residents of Lakenheath. In this case the biodiversity of the woodland may also be compromised should tree removal continue particularly if undertaken during the bird breeding season.

### **Policy Compliance/Power**

21. The local planning authority has powers under the Town & Country Planning Act 1990 and the Town & Country Planning (Trees) Regulations to make a TPO if it appears expedient in the interests of amenity to do so.
22. The making of a TPO in this instance, is in line with the powers and policies of the Council.

### **Performance Management Implications**

23. The applications determined under the TPO provisions and any subsequent appeals are not currently the subject of any national or local performance indicators.

### **Legal Implications**

24. This provisional TPO is served on the owner and occupier of the land affected by the TPO, and also on owners and occupiers of adjoining land, who had a period within which to make objections or representations to the Order. The statutory consultation period expired on 25 October 2013.

## **Human Rights Act and Diversity Implications**

25. These matters have been assessed in relation to and are considered to comply with the requirements of the Human Rights Act 1998. In relation to Article 6, interested parties have been advised of the making of this provisional Tree Preservation Order and their views have been considered within this report. Any interference with Rights under Article 8 and Article 1 of the First Protocol are necessary in the public interest.

## **Crosscutting Implications**

26. None

## **Risk Assessment**

27. As set out above, the Council may, in certain circumstances, be required to pay compensation to owners of properties damaged by preserved trees, if the Council has refused consent to carry out works to the affected tree and such works may have prevented the damage. These claims, however, are rare.

## **Council Priorities**

28. The Council is keen to safeguard the built and natural environment.

## **Recommendation:**

29. **It is recommended that the report be noted and Members confirm the Tree Preservation Order without amendments.**

## **Documents Attached:**

Working paper 1 – Location Plan  
Working paper 2 – Agents Tree Survey Plan  
Working Paper 3 – Historic Maps Showing Tree Cover (1885, 1905, 1999)  
Working Paper 4 – TEMPO Amenity Assessment Report

Steven Wood  
Head of Planning and Regulatory Services  
5 February 2014

## **CONTACT OFFICER**

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