

Item 5.2 - Tree Preservation Order No.2, 2023 (Land on the south side of Long Hill, Woldingham, CR3 7LS

Planning Committee Thursday, 7 September 2023

Purpose: For decision

Publication status: Open

Wards affected: Woldingham

Executive summary:

This report is to advise the committee on the confirmation or otherwise of Tree Preservation Order No.2, 2023 (Tandridge).

- Under Section 198 of the Town and Country Planning Act 1990 the Council, acting as the Local Planning Authority, has the power to protect trees and woodlands by means of a Tree Preservation Order (TPO) if it appears to be expedient in the interests of amenity.
- The report sets out the background for why the TPO was made, discusses the subsequent information that has been considered, and makes a recommendation for whether the TPO should be confirmed (made permanent) on the balance of the available information.

This report supports the Council's priority of:

Becoming a greener, more sustainable District.

Contact officer Alastair Durkin, Principal Tree Officer
adurkin@tandridge.gov.uk

Recommendation to Committee:

That, in accordance with its delegated powers, the Committee determines that Tree Preservation Order No.2, 2023 is confirmed as made.

Reason for recommendation:

The Council has the power to protect trees and woodlands by means of a Tree Preservation Order (TPO) in instances where trees are under threat of removal or harmful works, and on a precautionary basis, if necessary, provided it is 'in the interests of amenity'. The exercise of this power supports the Council's priority of 'Becoming a greener, more sustainable District'.

The decision is being determined at this committee due to there being an unresolved objection to the making of the TPO.

Introduction and background

1.0 Legislative context

- 1.1 The Council has the power to protect trees and woodlands by means of a Tree Preservation Order (TPO) in instances where trees are under threat of removal or harmful works, and on a precautionary basis, if necessary, provided it is 'in the interests of amenity'. These powers are contained within section 198, Part VIII [Special Controls] of the Town and Country Planning Act 1990, as amended by the Planning and Compensation Act 1991 and the related Regulations (The Act).
- 1.2 The Act does not define 'amenity', nor does it prescribe the circumstances in which it is in the interests of amenity to make a TPO. However, the Government considers that TPOs should be used to protect selected trees and woodlands if their removal would have a significant negative impact on the local environment and its enjoyment by the public. The Council should therefore be able to show that a reasonable degree of public benefit exists, or would accrue, before TPOs are made or confirmed.
- 1.3 The trees or woodlands selected for protection, or at least part of them, should normally be visible from a public place, such as a road or footpath, although the inclusion of other trees may be justified, for instance, where back garden trees can be viewed from properties by a significant number of members of the public.
- 1.4 The benefit to the public may be now or in the future; trees may be worthy of preservation for their intrinsic beauty, or for their contribution to the landscape. The value of trees may be enhanced by their scarcity and the value of a group of trees or woodland may be collective only. Other factors, such as importance as a wildlife habitat, nature conservation or response to climate change may also be taken into account but Government guidance advises that these factors alone are not sufficient to warrant a TPO.
- 1.5 A TPO is provisional until it is confirmed, in writing, within a six-month period by the Council. This means that the TPO takes immediate effect and ensures the trees cannot be lawfully removed during the statutory 28-day consultation period that follows the serving of a TPO and before confirmation. The TPO then continues in force on a provisional basis until either the TPO is confirmed (made permanent), or the six-month period expires.
- 1.6 Once a provisional TPO has been made, the confirmation of the TPO is delegated to an authorised Officer of the Council, provided there are no unresolved objections received within the 28-day time limit. Where unresolved objections remain, the decision whether or not to confirm, or modify the TPO, is made by the Council's Planning Committee.

2.0 Background

- 2.1 The Council received a third-party request for a TPO to be made on the parcel of woodland adjacent to, and south of, Long Hill. The request was made on the basis that the woodland was of sufficient amenity value to be made the subject of a TPO and a

claim was also made that the woodland was currently in the process of being sold to a local developer, and as such it may be under threat of clearance for development purposes. A further request for a TPO to be made was received subsequently from Woldingham Parish Council, citing similar reasons.

- 2.2 The Council receives request for TPOs to be made on land which is either up for sale or being sold on a regular basis. In itself the sale of land is not considered to be a sufficient reason for a TPO to be made, as a large number of properties are sold within the district each year, and these sales very rarely result in wholesale clearance of trees – the presence of mature trees generally being regarded as an asset to a property. However, if a woodland is purchased by a development company, then it is considered reasonable to take a precautionary approach. In these cases, officers will require further corroboration that a development company is involved.
- 2.3 Upon further enquiry the Parish Council provided the name of a development company that they believed were involved in the purchase of the woodland. It must be acknowledged that no direct evidence of this was provided. However, it was considered reasonable to assume that the Parish Council was a reliable source of local information.
- 2.4 Upon receipt of the information that a specific developer may be buying the woodland, a site visit was undertaken by your Principal Tree Officer to assess it for the purposes of a TPO (Appendix A).
- 2.5 When viewed from long Hill and the surrounding valley sides the woodland forms a prominent visual separation between the grass fields to its east and west and affords significant level of visual amenity to the local area (Figure 1), as well as providing potentially important wildlife habitat. In light of this assessment, it was considered that the wooded area was of suitable amenity value for a TPO to be made, and that it was expedient to do so on a precautionary basis, considering the information received regarding the potential for the land to be purchased by a property developer.



Figure 1 – Aerial photo of W1 with approximate boundary marked red – © Google 2023

- 2.6 The woodland itself comprises a mix of deciduous and evergreen native and naturalised trees, including mature ash, with scattered oak, yew, hazel, hawthorn, sycamore and field maple. Many of the mature ash are affected by ash dieback disease, and as the majority of these trees gradually decline and die it is likely that without intervention their places will be filled by the other species currently present.
- 2.7 The purpose of the 'woodland' category TPO is to safeguard a woodland as a cohesive unit. Government guidance acknowledges that while some trees may lack individual merit, it is the woodland as a whole that provides amenity. As such, all trees within a woodland category are protected and made subject to the same provisions and exceptions. In addition, trees which grow naturally or are planted within the woodland after the TPO is made are also protected. It is also the case that there are no limitations in terms of size for what is to be treated as a tree and therefore saplings are trees for the purposes of a TPO¹.

3.0 Objections and response

- 3.1 Following the making of the TPO a series of email comments were received from the new landowner and their solicitors, culminating in an objection to the making of the TPO. These comments and objections included copies of the land transfer documents associated with the recent sale of the woodland. The comments and objections received can be summarised as follows:
- a) That the buyers are not property developers, but a family with young children and a dog, and that they wish to use the woodland for the purposes of their own recreation. The provisional TPO was put on the land due to allegations that the land had been purchased by a developer. There is no evidence to suggest that the trees on the land are under any threat, so the TPO serves no real purpose.
 - b) That their current house which is opposite the woodland has very little garden space, which is insufficient for their use.
 - c) That they understand and are fully aware of the value of trees and their contributions to the environment, and wish to keep the area as woodland, but with some small areas cleared for recreational use.
 - d) That having to apply to the Council for works to trees within the woodland is an unnecessary burden.
- 3.2 Following receipt of the objections a site meeting was arranged between the Council's Principal Tree Officer and the landowners in an attempt to resolve the multiple concerns raised. Despite a constructive discussion around the future management of the woodland for recreation, it was not possible to resolve the objection.
- 3.3 Your officer's response to the objections received is as follows:
- a) It is accepted that any potential level of threat to the woodland is greatly reduced as a result of the woodland being purchased by a family as opposed to a property developer. However, it remains uncertain as to what specific works are proposed within

¹ Palm Developments Limited v Secretary of State for Communities and Local Government [2009] EWHC

the woodland, and how that might impact the woodland as an amenity into the future. If a woodland management plan was produced by the owners in consultation with a woodland consultant, then that could be agreed with the Council and an application made for the necessary works, either as a single operation, or on a cyclical basis – or if substantial felling was required then a Felling Licence from the Forestry Commission could be applied for – whereby the Council would be a consultee. On balance it is considered that there is a sufficient level of uncertainty remaining for it to be expedient for the TPO to be confirmed.

- b) It is reasonable for the woodland to be used for recreation. However, to use the woodland as a domestic garden a change of use would be required. The TPO does not prevent the reasonable use of the woodland for recreation provided that any works required to facilitate this use are granted consent by the Council following a formal application. As such officers do not consider this to be a sufficient reason not to confirm the TPO.
- c) This is accepted as above.
- d) It is accepted that having to make an application to the Council is an inconvenience. However, there is no fee payable to the Council for a TPO works application and if a sensible woodland management plan is produced that respects the amenity value provided by the woodland, then the application process would be straightforward. It is a process that a large number of TPO tree owners go through without any problems on an annual basis.

4.0 Discussion

- 4.1 As outlined above it is accepted that when the original decision was made to make a TPO, it was on the basis that a threat to the amenity provided by the woodland may exist if the land was purchased by property development company. As it transpired, this information was inaccurate. Whilst this is the case, and whilst it is accepted that the current owners may not intend to undertake wholesale clearance of the land, there is still a great deal of uncertainty as to the exact works that are required in order to make the land more accessible for recreation. The TPO does not prevent management works, provided consent is obtained from the Council prior to the works taking place. The TPO gives the Council a degree of control as to how the woodland is managed in the future, to ensure that the amenity it affords to the public is not adversely affected.
- 4.2 It is considered that, on balance, the inconvenience caused to the owners of the woodland is justified by the benefit to the local and wider community by ensuring that the woodland is protected on an ongoing basis. It is also the case that land ownership changes over time, and the presence of the TPO will go some way to ensuring that the woodland is protected long into the future. This is considered to be particularly important considering the proposed changes to the boundaries of the Surrey Hills Area of Outstanding Natural Beauty, currently under consideration following consultation, which encompasses the TPO woodland.

5.0 Conclusion

- 5.1 Due to its significant contribution to the local landscape and environment when viewed from Long Hill and the surrounding area, the woodland selected for protection is considered to be of suitable value to preserve in the interests of amenity, and, on

balance, it is expedient to do so considering the uncertainty as to the future management of the site. It is therefore recommended that the TPO is confirmed as made.

Other options considered

6.0 As advised above, a constructive site meeting was held with the owners. However, at that point in time, and as is currently the case, it is not certain what the intentions for the site are on any detailed basis, and no woodland management plan has been agreed. It is therefore considered by your officers that the best option is to recommend confirmation of the TPO in its current form. If in the future an application is received, then the Council could consider allowing small areas to be managed for recreation purposes.

Climate change

Woodlands contain substantial carbon in the soil, trees and other vegetation, and globally they are hugely important to the carbon, water and energy cycles. Removing trees releases CO₂ into the atmosphere, while growing trees absorb CO₂ from the air. Other greenhouse gases (GHG) such as methane and nitrous oxide are also exchanged between trees and the atmosphere, so woodlands are a key component of the planet's GHG balance. Therefore, the functioning and management of woodlands are critical to efforts to reduce climate change ('climate change mitigation') and reduce the net GHG emissions into the atmosphere ('emissions abatement').

On a local level woodlands and trees also intercept rainwater and increase soil permeability – thereby slowing the flow of water into the drains and reducing the potential for surface water flooding.

Appendices

Appendix 'A' – Tree Preservation Order No. 2, 2023 (Tandridge)

----- end of report -----