

# **Tree Preservation Order No.9, 2023 (Tandridge Land south of Honeypot Farm & Land at Galleys wood, Honeypot Lane, Edenbridge, TN8 6QH**

## **Planning Committee Tuesday 16<sup>th</sup> April 2024**

Report of: Chief Planning Officer

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Purpose: For decision

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Publication status: Open

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Wards affected: Limpsfield

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### **Executive summary:**

This report is to advise the Committee on the confirmation or otherwise of Tree Preservation Order No.9, 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.

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### **This report supports the Council's priority of:**

Becoming a greener, more sustainable District

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## **Recommendation to Committee:**

That, in accordance with its delegated powers, the Committee determines that Tree Preservation Order No.9, 2023 is confirmed as made.

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## **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, 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.

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## **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 their properties by a significant number of members of the public.
- 1.4 The benefit may be now or in the future; trees may be worthy of preservation for their intrinsic beauty, or for their contribution to the landscape, or because they serve to screen an eyesore or future development. 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 considered, but in the absence of the preceding elements of amenity contribution, 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 protected the oak trees that are subject to this TPO on a precautionary basis when it became aware that the land was being marketed for sale at auction as a sub divided plot of 11 separate parcels of land, all with access from Honeypot Lane (Appendix A).
- 2.2 The Council receives requests for TPOs to be made on land which is either up for sale or being sold on a regular basis. The sale of land is not normally considered to be a sufficient reason on its own for a TPO to be made, as many 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. Whilst this is the case, where agricultural land, such as pasture, is divided up in a way more suitable for housing development, there is a clear potential for any trees growing within or immediately adjacent to be at risk of removal or damage if the new owner considers that existing trees are a constraint to the development potential of the land.
- 2.3 Following consideration of the marketing particulars, a site visit by your Principal Tree Officer was made to assess the trees bordering the land for the purposes of a TPO (Appendix B).
- 2.4 The oak trees that have been made the subject of the TPO are visually prominent when viewed from the public right of way No. 215 which crosses the land from Honeypot Lane. As such the trees afford significant levels of visual amenity to the local area (Figure 1), as well as providing potentially important wildlife habitat.
- 2.5 It is also the case that T2 (a potential veteran tree) and part of G1 are located within an area of designated Ancient Woodland which immediately abuts the land. Ancient woodland and veteran trees are irreplaceable habitats and are afforded a high degree of protection within the NPPF 2023 and as such the protection of the roots and branches of trees within the woodland which may encroach the land is vitally important if development was to occur, or if any new owner wished to exercise their common law rights to cut back the branches or roots of the trees.
- 2.6 In light of the above, it was considered that the oak trees were of suitable importance for a TPO to be made, and that their amenity value was sufficiently high that it was expedient to protect them on a precautionary basis, considering the land was being marketed for sale at that time.
- 2.7 Although not directly relevant to the TPO, an Article 4 Direction has also been served on the land, which withdraws certain permitted development rights.



Figure 1 – Aerial view of the oak trees (ringed yellow) in relation to Honeypot Lane and ROW 215 (approximate dotted red)

### 3.0 Objections and response

- 3.1 Following the making of the TPO a letter of objection was received from an agent acting on behalf of the owner of the land.
- 3.2 The agent has stated within the letter that the land had been offered for sale as a single parcel of agricultural land, but during the course of the sale to the new buyer, it subsequently appeared online being advertised for re-sale by the prospective buyer in lots, prior to completion without the landowner's knowledge, and that the owner has no intention of selling the land in that way. The land was subsequently withdrawn from auction.
- 3.3 The objections can be summarised as follows:
  - a) T1 of the Order is located on the western boundary with it being apparent that half of the tree falls on land not in my client's ownership. This ultimately would mean that any owner would require permission of the adjoining landowner to fell the tree.

- b) In respect to T2 this appears to fall just outside of our client's land and so it is unclear why the Council have imposed the order on this tree as this has little bearing on the sale of the land. It is also noted that the Grouped TPO trees are also on the southern periphery of the site and so again these trees are unlikely to be affected should the land be sold whether it be in a single or multiple lots.
- c) My client has owned the land for more than 20 years and it is not in his interests to subdivide the land, hence why the land was marketed as one single plot. The trees are at no immediate risk as they are located along the periphery of the field and do not prevent it being farmed (in fact they help provide some shade for livestock). The land has no planning permission for any use other than for agriculture.
- d) Simply because the land has been re-offered for sale in multiple parcels does not in itself mean that there is any threat to the trees. Any development on the land would require planning permission and the impact on trees would be a material consideration. Development is unlikely given the Green Belt location. Furthermore, any works to fell the trees would likely require a Felling Licence due to their size as the land is not garden land.
- e) To unnecessarily impose this Order (in addition to the proposed Article 4 Direction) could result in my client having difficulty being able to sell the site on as a single entity. The Order will create additional bureaucracy requiring applications for routine maintenance works to the trees.
- f) The wider rural area is characterised by trees along most of peripheries of fields in the area and so the arrangement is not unique and these trees are not of any particular amenity value. Views of the trees subject of the Order are considered to be relatively limited given the extent of cover and it is only from the public footpath along the southern edge of the field and glimpses from the roads where the trees have some but not meaningful contribution to the rural setting of the area.
- g) The fact that the site is being sold should not be reason alone for an Order to be placed on trees as it does not mean that there is a threat to them. Whilst it is my client's intention to sell the land off as one parcel, even if the parcels were sold off separately it is unclear how these trees will be at any risk of being felled or harmed and so on that basis the Order should not be confirmed.

3.4 Following receipt of the objection, the Council's Principal Tree Officer wrote to the agent to address the concerns and resolve the objection. To the date of this report, no further response has been received.

3.5 Your officer's response to the objections are as follows:

- a) A TPO does not just protect the trunk of a tree, but the roots and branches as well. Even if a tree were to be growing wholly or in part upon land owned by another party, the roots and branches encroaching into the Honey Pot Farm land would also be protected. Particularly with T1, this was the main consideration, as the tree is probably a veteran tree, or at the very least locally notable. It is not just the removal of the tree which the TPO prevents without consent, but also harm to roots or overhanging branches. All those parties affected by the TPO have been served with the particulars, to the normal requirements of the legislation.
- b) As above

- c) Irrespective of whether it can be accepted that the owner does not wish to subdivide the land, there is still some uncertainty as to future ownership and how the land will be managed in the future, as the owner still wishes to sell the land.
- d) Section 197 of The Act places a duty on the LPA to:

*to ensure, whenever it is appropriate, that in granting planning permission for any development adequate provision is made, by the imposition of conditions, for the preservation or planting of trees; and*

*(b) to make such orders under section 198 as appear to the authority to be necessary in connection with the grant of such permission, whether for giving effect to such conditions or otherwise.*

As such the use of TPOs within the planning system is not only encouraged but it is a statutory duty to do so when it appears to the LPA to be necessary. The preservation of trees would be additional to and sit alongside the consideration of any other material considerations.

The protection afforded by the Forestry Act 1967 felling licence system is strong, but it is generally designed for the regulation of felling within forests and woodlands. As such there is an exemption for the removal of 5 cubic metres of timber per calendar quarter, and 10 cubic metres (roughly 10 tonnes of oak) could therefore be removed over a 2-day period straddling the end of a calendar quarter without any breach of the Forestry Act 1967. That would account for several of the oak trees without any protection being relevant. As such a TPO is considered to be the appropriate mechanism to afford statutory protection to the oak trees in question.

- e) For normal tree management works the Council would require an application. This is not an onerous process and is undertaken by both landowners and tree contractors on a very regular basis. Provided the works are reasonably justified and will not harm amenity to a significant degree then consent would normally be granted. There is no reason why the TPO would prevent or make sale of the land difficult if it's current agricultural use was to continue. The TPO may of course affect decision making if the prospective owner was a housing developer, as the trees would be a constraint to the development of the site, albeit a relatively minor one considering the space available.
- f) The oak trees that have been made the subject of the TPO are visually prominent when viewed from the public right of way No. 215 which crosses the land from Honeypot Lane. As such the trees afford significant levels of visual amenity to the local area as well as providing potentially important wildlife habitat.
- g) In your officer's opinion the amenity value of the trees and the potential uncertainty as to future ownership and management justifies the making and confirming the TPO on a precautionary basis. On this matter the Government Planning Practice Guidance (PPG) states:

*"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..."*

*... Authorities can also consider other sources of risks to trees with significant amenity value. For example, changes in property ownership and intentions to fell trees are not*

*always known in advance, so it may sometimes be appropriate to proactively make Orders as a precaution.”*

#### **4.0 Discussion**

- 4.1 As detailed above the TPO does not prevent reasonable management works, provided consent is obtained from the Council prior to the works being undertaken. The TPO gives the Council a degree of control as to how the trees are managed in the future, to ensure that the significant amenity and environmental value they afford is preserved, irrespective of the future management of the land.
- 4.2 It is considered that, on balance, the minor inconvenience caused to the owners of the trees to make an application when they wish to undertake works is justified by the benefit to the local and wider community and the environment by ensuring that the trees are protected on an ongoing basis. It is also the case that as land ownership changes over time, the presence of the TPO will go some way to ensuring that the trees are protected long into the future.

#### **5.0 Conclusion**

- 5.1 Due to their positive contribution to the local landscape the oak trees selected for protection are of suitable amenity value to preserve in the public interest, and it is expedient to do so on a precautionary basis. It is therefore recommended that the TPO is confirmed as made.

### **Other options considered:**

- 6.0 As advised above, correspondence was entered into with the owner's agent to attempt to resolve concerns raised. However, as modification or revocation of the TPO would inevitably either reduce or remove the protection afforded it is unlikely that a compromise is possible.

### **Key implications:**

#### **Comments of the Head of Legal Services**

No comments

#### **Equality Duty**

The Council has a responsibility to promote equality of opportunity, eliminate unlawful discrimination and promote good relations between people who share protected characteristics under the Equality Act 2010 and those who do not. The Case Officer has reviewed the proposed development and documentation and considers that the proposal is not likely to have any direct equality impacts.

#### **Climate change**

Growing trees absorb CO<sub>2</sub> from the air. Other greenhouse gases (GHG) such as methane and nitrous oxide are also exchanged between trees and the atmosphere, so trees are a key component of the planet's GHG balance. Therefore, the functioning and management of trees and woodlands on a worldwide basis 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, 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’ – Marketing materials

Appendix ‘B’ – Tree Preservation Order No. 9, 2023 (Tandridge)

### **Background papers**

Objection letter

Your officer’s response