

TPO 676 determination

1. On 8th April 2020 the Council considered whether to make TPO 676 (2019). The TPO was made on 10 October 2019 and copies of the Order, together with a letter setting out the particulars required by Town and Country Planning (Tree Preservation) (England) Regulations 2012 were sent to interested parties on 10 October 2019.
2. The Council has received two letters providing representations and objections to the TPO. The objections were received from Keer Bridge Limited the owner of the land affected by the TPO and by L&W Wilson Limited, a company with an options agreement in respect of the affected land. The objections are as follows:
 - a. The TPO on the grounds that it could interfere with a proposed development on the land.
 - b. There was no intention to harm the trees – this could have been done in hours should the owner wished to carry out the works.
 - c. L&W are to submit a planning application in respect of the site. It is proposed that the site could be protected via Planning Permission
 - d. Reassurances were provided by L&W Wilson that no harm would come to the trees pending the planning permission process and that the TPO is accordingly not necessary.
3. The Council's Appeal Committee would normally have determined whether or not the TPO should be made. Unfortunately, due to the Coronavirus pandemic, it has not been possible to convene an Appeals Committee hearing. As a result of this, the Council has determined the matter via its urgent decisions provisions. This involves the Council's Chief Executive, in consultation with the chair of the Appeals Committee, taking the decision.
4. Under the Appeals Committee procedure rules the objectors would normally have the opportunity (should they wish) to attend the hearing and to make short submissions. As this is not possible in the circumstances, the objectors have been given 5 clear days following receipt of the Committees report to submit any further written representations on the matter.
5. On behalf of L&W, a letter from Antony Wood of Yew Tree and Gardens, dated 24 March 2020, has been submitted to the Council as further representations and objections to the TPO. Mr Wood raises the following further objections:
 - a. There are areas in which trees have been defined as 'woodland' which are not woodland having limited or no significant tree cover
 - b. Woodland W3 does not meet the description of 'woodland'
 - c. It is unclear why W2 has been designated 'woodland'. It mainly contains dense self-seeded ash of poor condition and a considerable portion is occupied by unmanaged shrubs.
 - d. W2 identifies cherry laurel as a tree. It is said to be a shrub and not a tree.
 - e. As to the specific areas identified by Yew Tree and Gardens:
 - i. This is not a woodland. It contains three shrubby formed multi-stemmed goat willow and contains little or no tree cover

- ii. W1-B forms a visible boundary element (with the majority of its length being single trees) and it is not clear why a group designation has not been used.
- iii. W1 – C and W1 – D – neither areas contain ‘current tree cover’ other than the occasional emergent and sapling Goat Willow.
- iv. W1 –C, W1-E and W1-F: comprise single width linear arrangements of boundary trees. If a boundary screening / greening function was required a group designation would be more appropriate.
- v. Confirmation of the woodland order, in respect of W1 –C, D and F would create de facto woodland areas.
- vi. Common ash in W2 had evidence of *Hymenoscyphus fraxineus* (ash dieback). As W2 contains 50% Common Ash and 25% shrubs a TPO in this area is inappropriate.
- vii. Common ash in W1 also shows signs of ash dieback. The disease could lead to the loss of the majority of tree cover in this section.
- viii. As to W3 and W1, a significant portion of the trees are goat willow. It is unclear why they would be suitable for a TPO.

Decision

The definition as woodlands

6. Yew Tree and Garden have suggested that areas of the TPO are not woodlands on the grounds that a ‘woodland’ is defined as “land covered with trees” and on the grounds that some of the area does not meet this particular description (being small in area or lacking in the tree cover).
7. Whilst it is accepted that a woodland can be viewed as “land covered by trees”, it is considered that this is a broad –brush definition. ‘Woodlands’ as Cranston J describes in Palm Developments Limited v The Secretary of State for Communities and Local Government v Medway Council [2009] EWHC 220 Admin are [per para 42] “a mass of undifferentiated trees” and contain [per para 36] “...*undergrowth...around the base of trees, properly called undergrowth which inevitably including saplings, immature bushes, shrubs and mature, but still small bushes, scrub and other plant matter and miscellaneous vegetation such as grasses, ferns and wild flowers.*”
8. Given the view of the Court in the *Palm Development*, it is considered that the essential question is whether or not W1, W2 and W3 meet the characteristic of woodland. This includes consideration of the number of trees and the land covered by trees. The presence of some shrubs and saplings is to be expected in woodlands.
9. The Town and Country Planning Act 1990 and the Town and Country Planning (Tree Preservation) (England) Regulations 2012 do not provide a maximum or minimum size of a woodland. Accordingly, whilst the area cover may affect the determination of whether or not land is a woodland, it is to be viewed in the round with the other characteristics of a woodland.

10. Looking at the characteristics of areas W1, W2 and W3, the Council considers that they are to be viewed as 'woodlands'. The photographs, annexed to the Committees report, show what appears to be a sufficient number of trees (of sufficient value and appearance) for the areas to be considered woodland. The presence of scrubs, undergrowth, shrubs and saplings do not distract from their character as a woodland. On the contrary they support the definition.
11. Yew Tree and Gardens have suggested that the reference to Cherry Laurel as a tree is incorrect. They submit that whilst it is categorised as a species of 'tree' it is ordinarily to be considered as a 'shrub'.
12. Having carefully reviewed the photographs, the Council has determined that the Cherry laurel is a tree in that it is a species of tree and that when one looks at the photograph it has the appearance of what would ordinarily be considered a 'tree'.

Amenity

13. A Tree Evaluation Method for Preservation Order Assessment (TEMPO) of the site was undertaken by the Arbricultural Officer on 7 October 2019. The assessment is a means of appraising the amenity value of the site. The site scored 17 points out of a possible maximum score of 25. This puts the merit of the TPO (according to the decision guide) at "Definitely merits TPO".
14. The objectors and Yew Tree and Gardens have not stated that the officer's scoring is inaccurate or in-correct. Moreover, the report appears balanced, mentioning issues such as ash dieback and the scoring is not excessive. Accordingly, the Council does not see any good reason to go behind the TEMPO score.
15. The TEMPO does not break the site down as Yew Tree and Gardens have done. In addition to this, it is noted that the officer's site inspection was limited due to security fencing.
16. The Trees do have significant screening and greening values. The photographs provided by the officer are strong evidence of this. Both W2 and W3 have greening and screening value from the highway and W1 has screening value to the residential and recreational areas. This is made all the more important by the derelict state of the brown site situated outside the boundary of the TPO.
17. The removal of the woodlands and its greening and screening effect would have a significant negative impact on the local environment and its enjoyment by the public. This is particularly the case for those that live in the locality and those that use the nearby recreational area and public right of way.
18. It has been suggested be Yew Tree and Gardens that the presence of ash dieback W2 makes the TPO inappropriate and that the disease could result in the loss of trees in W1. The Council accepts that the condition of trees is of relevance. However, the Council is concerned, primarily, with the amenity value now (see Beyers v Secretary of State for Environment, Transport and Regions [2000] 8 WLUK 274). In addition to this, it is expected that trees will die and that new trees will grow in areas of woodland.

19. At present the trees, notwithstanding the presence of ash dieback, do present significant amenity value and enjoyment to the public. Accordingly, it is not considered that the presence of ash dieback should prevent the TPO from being made.
20. Given the high TEMPO score and the negative impact the removal of the woodland would have on the area, it is considered that the woodlands have a sufficient amenity value.

Expediency

21. It is also considered expedient for the order to be confirmed. There is clearly an interest in substantial development of the land and there is an indication from objectors that if development were to go ahead that some of the trees would have to be removed. This being the case there is a threat of removal or damages to the trees that needs to be protected against.

Other considerations

22. Whilst it is appreciated that the confirmation of the TPO (with or without Modification) may have an effect on the development of the site, it is not considered materially relevant to the consideration of whether or not a TPO should be made at this time. If planning permission is sought, the LPA can consider works in relation to land covered by TPOs.
23. The possibility of planning permission for the site is again not materially relevant to whether or not the TPO should be made. Planning permission for development has not yet been determined and the decision of the LPA cannot be pre-determined. In addition to this, planning permission does not afford the trees the same level of immediate protection as a TPOs.
24. It is borne in mind that LPAs have a duty to review TPOs and it is understood that the Council's Tree Officer will be reviewing TPOs in the near future. TPO 676 will be included in the review process.

Conclusion

25. In reaching this decision the Council has had to consider whether it is expedient in the interest of the amenity to make the TPO.
26. The Council, having carefully considered the Appeals Committee report and all the representations received from the objectors and Yew Tree and Gardens, has determined that it is expedient in the interest of the amenity to make the TPO without modification. The removal of the woodlands would significantly affect the amenity value and enjoyment by the public.