

Agenda Item 48.

Application Number	Expiry Date	Parish	Ward
TPO 1684/2019 (Confirmation)	Expiry of TPO 8 th October 2019	Arborfield and Newland, Barkham	Arborfield Barkham

Applicant	WBC TPO confirmation
Site Address	The Coombes Woodland Barkham
Proposal	Confirmation of TPO 1684/2019
Type	N/A
PS Category	N/A
Officer	Chris Hannington
Reason for determination by committee	Requested by Head of Planning

FOR CONSIDERATION BY	Planning Committee on Meeting 11 th September 2019
REPORT PREPARED BY	Trees and Landscape Team Manager

SUMMARY
The Committee is requested to confirm that they authorise officers to confirm TPO 1684/2019 (appendix 1). The new TPO offers protection to all species in woodland across a wider area than TPO 371/1988 (appendix 2) which covers only certain species

PLANNING STATUS
<ul style="list-style-type: none"> • Designated Countryside • Adjacent to Bearwood Park Registered Historic Park and Garden • Article 4 Direction

RECOMMENDATION
That the Committee authorise the confirmation of the TPO subject to modifications as suggested in Appendix 3 to address concerns raised by adjacent owners during the 28 day consultation period

TPO PLANNING HISTORY		
Application Number	Proposal	Decision
TPO 371/1988	TPO protects only certain woodland species and a new TPO was served when reports of tree unauthorised felling of unprotected woodland trees (<u>Ilex aquifolium</u> – holly and <u>Acer pseudoplatanus</u> - sycamore) were received during the last quarter of 2018. Other felling involved removal of <u>Rhododendron ponticum</u> , a non-native, highly invasive weed species. This TPO remains in force and, apart from the variation, is unchallenged.	TPO served 22nd April 1988.

Variation to TPO 371/1988	Following a site visit and report by the Trees and Landscape team manager (dated 19th December 2018). A variation to TPO 371/1988 was served on 20th December 2018. This variation was challenged by Quiet Waters Consultancy on behalf of one woodland plot owner Mr Dean Thomson. QWC threatened Judicial Review over concerns that the council has wrongly stated that the variation, which added trees to the order, took immediate effect when the order was made. In law the new order would only have taken effect upon confirmation.	TPO served on 20th December 2018 and, following threat of JR, this was allowed to lapse.
TPO 1679/2019	In order to ensure protection of trees and avoid a JR a new order, TPO 1679/2019, was served on 8 th February 2019. This TPO was challenged by Quiet Waters Consultancy on behalf of Mr Dean Jules and Mrs Candice Jules the owners of a plot of land in the Coombes woodland, who threatened Judicial Review on the basis that a clerical error had been made when serving the TPO not allowing the full 28 day consultation period. This TPO was allowed to lapse.	TPO served on 8 th February 2019 and, following threat of JR, this was allowed to lapse
TPO 1684/2019	In order to ensure protection of trees and avoid a JR a new order, TPO 1684/2019 was served. The new TPO protects all tree species in the woodland. Representations were received from landowners see elsewhere in this report.	TPO served 11 th April 2019. Date for confirmation 8 th October 2019.

SUMMARY INFORMATION

For Commercial

Woodland area – approximately 57 hectares

Previous woodland area – approximately 37 hectares

Change in area protected – approximately 20 hectares

NB All species (of trees) to be protected under the new TPO

CONSULTATION RESPONSES

N/A. The council is not required to consult on the serving of TPOs

But NB Parish Council and local ward members support the TPO

REPRESENTATIONS

Town/Parish Council: No comments received

Local Members: No comments received

Neighbours: See appendix 3

APPLICANTS POINTS

This is an important woodland from a wildlife and landscape amenity perspective. Public rights of way cross and border the woodland and it therefore has recreational amenity also. There is a clear threat to the fabric of the woodland from the felling of tree species not covered by the original 1988 TPO following sub-division of the land and selling on as wood lots.

PLANNING POLICY

National Policy	NPPF	National Planning Policy Framework
Adopted Core Strategy DPD 2010	CP1	Sustainable Development
	CP3	General Principles for Development
	CP7	Biodiversity
	CP8	Thames Basin Heaths Special Protection Area
Adopted Managing Development Delivery Local Plan 2014	CC01	Presumption in Favour of Sustainable Development
	CC02	Development Limits
	CC03	Green Infrastructure, Trees and Landscaping
	TB21	Landscape Character
	TB23	Biodiversity and Development

PLANNING ISSUES

Description of Development:

1. New TPO

History of Site:

2. See section on 'TPO Planning History' above.
3. Enforcement and Development planning in the area of the woodland is important here as, although planning approval would have the effect of overriding it (where tree works or removal were required to implement a permission), the new TPO would be a material consideration in determining any application. The new TPO will also be relevant given the Article 4 Direction (see below).
4. An injunction was granted in the High Court v Candice and Dean Jules on 14th December 2019 regarding storage of building materials, building works, engineering operations and works to protected trees.
5. An injunction was granted in the High Court v Candice and Dean Jules on 28th January 2019 regarding occupancy of an unauthorised dwelling – occupants to vacate the site by 5th April 2019
6. A further injunction was granted in the High Court v Candice and Dean Jules on 3 April 2019 regarding occupancy of an unauthorised dwelling – occupants to vacate the site by 4th May 2019
7. An Enforcement Notice requiring removal of a ditch culvert, (RFS/2019/085075), was served on Mr Dean Thomson on 21st May 2019. The ditch culvert was removed and the woodland bund restored
8. An Article 4 Direction was served on 19th July 2019 and confirmed on 31st July
9. An Enforcement Notice requiring the removal of an extension to an above ground Victorian water tank (RFS/2019/085025) was served on 31st July 2019. It is understood that an appeal is to be submitted
10. Several planning applications have been received since the serving of the Article 4 Direction relating to new fencing of woodland plots

Principle of the TPO:

11. The National Planning Policy Framework has an underlying presumption in favour of sustainable development which is carried through to the local Development Plan. The Managing Development Delivery Local Plan (MDD) Policy CC01 states that planning applications that accord with the policies in the Development Plan for Wokingham Borough will be approved without delay, unless material considerations indicate otherwise
12. The principle of the TPO is in accordance with the Town and Country Planning Act (1990). Paragraph 198(1) states that:
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

13. The TPO is in accordance with the government guidance on serving and confirming TPOs
14. Paragraphs 170 of the National Planning Policy Framework states that planning policies and decisions should contribute to and enhance the natural and local environment by recognising the intrinsic character and beauty of the countryside, and the wider benefits from natural capital and ecosystem services – including the economic and other benefits of ... trees and woodland’.
15. The new TPO would contribute to and enhance the natural and local environment in accordance with the NPPF

Character of the Area:

16. The Wokingham District Landscape Character Assessment (WLDCA 2004) as being a high quality landscape that is sensitive to change. The area was formerly designated an Area of Special Landscape Interest (ASLI) under the Wokingham District Local Plan (2004) and although no saved policy relates to this it is indicative of the importance of this high quality landscape
17. The Wokingham Borough Landscape Character Assessment 2004 (WDLCA) identifies the site as falling within Landscape Character area (LCA) L1: Bearwood Wooded Sand and Gravel Hills. The assessment describes key characteristics of the landscape including undulating upland hills, heavily wooded, smaller scale intimate rural patchwork of deciduous woodland and sheep pasture, recreational use including horse riding, and a relatively secretive landscape.
18. The landscape quality is described as high with a strong character and of good condition. The landscape strategy is to conserve and strengthen the existing character. The landscape overall is of moderate sensitivity which means that some changes may be accommodated without being visually apparent albeit that is within the wooded context and ‘private’ secluded character. It is hard to see how tree felling on a large scale could be accommodated in this way given that it is the wooded context itself that must be relied on to accommodate changes. This point is important, particularly as this is not a vast area of commercial forestry or woodland management where larger coups might be expected to be felled.
19. The Barkham Village Design Statement (adopted SPD) refers to the parish of Barkham lying principally in open farmland which rises gently toward the ridge known as Barkham Hill. The parish boasts a number of significant landscape features and views recorded in the Statement.
20. Although the council has not conducted a full formal Valued Landscape Assessment, research to date strongly supports the view that this landscape is ‘valued’ for the purposes of paragraph 170 and particularly 170a) of the NPPF (2018).
21. It is key to the understanding of ‘valued landscape’ that the wider landscape is assessed, ie the landscape in which the site sits, and not just the landscape of the site itself. Having briefly taken this wider approach to assessing the landscape I

consider it to be 'valued'. This is because of the important and high quality landform; landscape quality and condition; the high scenic quality; the representativeness of features and elements; the higher than normal wildlife, geological and historic interest of the landscape; the high recreational value for walking and riding; tranquillity; the associations with the Walter family of Bearwood and others; and historic events of importance that have taken place in this landscape.

Policy background:

22. The Council has duties under paragraph 40(1) of the NERC Act (2006) 'in exercising its functions, have regard, so far as is consistent with the proper exercise of those functions, to the purpose of conserving biodiversity' and this includes conserving habitats. Paragraph 40(3) confirms that 'Conserving biodiversity includes, in relation to a living organism or type of habitat, restoring or enhancing a population or habitat'.
23. The Combes, including the area of the TPO encompasses a Local Wildlife Site (woodland) and a Local Geological Site (important for stratigraphical reasons - one of the few good examples of the younger Palaeogene beds in Berkshire) Policy and decisions protecting and enhancing such sites is referred to in the new NPPF (2018). See policy section below.
24. The Council has duties under paragraph 198 of the Town and Country Planning Act (1990): 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.
25. The duty of the Council in regard to a valued landscape is set out in paragraphs 170 and 170a) (valued landscape) and b) (countryside) of the NPPF (2018).
26. There is a requirement that planning decisions should 'contribute to and enhance the natural and local environment by' (170) 'protecting and enhancing valued landscapes, sites of biodiversity or geological value' (170 a)) and 'recognising the intrinsic character and beauty of the countryside' (170 b)). It is clear that contributing to and enhancing valued landscapes and also ordinary or 'mere countryside' (in the words of Mr Justice Ouseley in *Stroud v SoSCLG*) is a policy objective of the NPPF.
27. Core Strategy Policies CP1 and CP3 seek to maintain or enhance the high quality of the environment and ensure that there is no detrimental impact upon the landscape amongst other things.
28. Local Plan policy CCO3 protects green infrastructure trees and landscape and includes that proposals should show how they 'protect and enhance the Borough's Green Infrastructure networks' and 'Protect and retain existing trees, hedges and other landscape features'. The policy is clear that 'Development proposals which would result in the loss, fragmentation or isolation of areas of green infrastructure will not be acceptable'.
29. Local Plan Policy TB21 requires that proposals demonstrate how they have addressed the WDLCA including landscape quality, strategy, sensitivity and key

issues and also that they shall retain or enhance the condition character and features that contribute to the landscape.

30. I consider that a new TPO would be expedient and would accord with the Framework, the policy and legislation discussed above.

Potential harm:

31. The operations I have seen on site give me concern that they either are already, or are likely in the future, to be damaging to wildlife and landscape amenity and probably geological interests as well if earth moving and excavation to create access tracks is carried out in the woodland. As well as protecting the woodland for its visual amenity, confirmation of the woodland TPO would offer some protection to other elements of amenity (wildlife amenity for example) and would secure the fabric of tree roots, trunks branches and shoots, as well as regenerating saplings.
32. The varied or newly made TPO will protect all natural regeneration of native species but will not preclude removal of *Rhododendron ponticum* agg. as this species could not be considered a tree species. It would preclude removal of *Acer platanoides* and *A pseudoplatanus* and other invasive aliens without an application and subsequent permission. However management plans can be agreed for TPO woodland and the Council would look at management plans that are sensitive to landscape amenity and wildlife conservation in a favourable light.

Government Guidance on TPOs:

33. Guidance from the government is held online at <https://www.gov.uk/guidance/tree-preservation-orders-and-trees-in-conservation-areas>. Included are the following paragraphs by subject matter:

34. What are a tree owner's responsibilities?

Owners of protected trees must not carry out, or cause or permit the carrying out of, any of the prohibited activities without the written consent of the local authority. As with owners of unprotected trees, they are responsible for maintaining their trees, with no statutory rules setting out how often or to what standard. The local planning authority cannot require maintenance work to be done to a tree just because it is protected. However, the authority can encourage good tree management, particularly when determining applications for consent under a Tree Preservation Order. This will help to maintain and enhance the amenity provided by protected trees.

Arboricultural advice from competent contractors and consultants, or the authority, will help to inform tree owners of their responsibilities and options. It is important that trees are inspected regularly and necessary maintenance carried out to make sure they remain safe and healthy.

Paragraph: 002 Reference ID: 36-002-20140306

Revision date: 06 03 2014

35. When should the woodland category be used?

The woodland category's purpose is to safeguard a woodland as a whole. So it follows that, while some trees may lack individual merit, all trees within a woodland

that merits protection are protected and made subject to the same provisions and exemptions. In addition, trees and saplings which grow naturally or are planted within the woodland area after the Order is made are also protected by the Order. It is unlikely to be appropriate to use the woodland classification in gardens. The woodland category should not hinder beneficial woodland management. Whether or not they make an Order, authorities can consider encouraging landowners to bring their woodlands into proper management under the grant schemes run by the Forestry Commission. If a woodland subject to an Order is not brought into such a scheme, authorities can still encourage applications to manage the trees in ways that would benefit the woodland without making a serious impact on local amenity, for example by making a single application for regularly repeated operations.

Paragraph: 028 Reference ID: 36-028-20140306

Revision date: 06 03 2014

The Public Sector Equality Duty (Equality Act 2010)

*In determining this application the Council is required to have due regard to its obligations under the Equality Act 2010. The key equalities protected characteristics include age, disability, gender, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief. There is no indication or evidence (including from consultation on the application) that the protected groups identified by the Act have or will have different needs, experiences, issues and priorities in relation to this particular planning application and there would be no significant adverse impacts upon protected groups as a result of the development. **(Delete/amend as appropriate: If impacts upon persons with protected characteristics are identified please seek further guidance. The impacts must be detailed in this section, consideration must be given to potential mitigation and all issues given weight in the planning balance).***

CONCLUSION

The TPO confirmation is necessary to prevent removal of trees in an area where the evidence points to first intentions of new purchasers being to develop the land along with supporting infrastructure. The confirmation of the new TPO is relevant to planning in that it will protect an area of countryside in line with Council policy and the National Planning Policy Framework. The confirmation of the TPO will make the protection of the woodland more enforceable as it covers a wider area of land and a wider range of species that make up the current woodland. The confirmation of the TPO will be precise and reasonable in all other respects.

The TPO confirmation will not undermine sound woodland management and it will not prevent the removal of weed species. Although it will require that any proposed works are subject to a tree works application. This will enhance the quality of the work as the council's qualified and experienced arboriculturalists will have an opportunity to advise and comment and, finally, to make the delegated decision on any application.