

09/23

Old Dean

**LOCATION:** Woodland between Devonshire Drive and Larchwood Glade, Camberley

**PROPOSAL:** To protect a Woodland by means of Tree Preservation Order

**TYPE:** Tree Preservation Order (TPO)

**APPLICANT:** Jane Whitby – Land Owner

**OFFICER:** Alastair Barnes

This matter has been reported because under the Scheme of Delegation when objections are received to the serving of a Tree Preservation Order this must be reported to the Planning Applications Committee.

**RECOMMENDATION: Confirm the Order with no modifications**

**1.0 INTRODUCTION**

- 1.1 A Tree Preservation Order (TPO – 09/23) has been served to protect the Woodland Copse, between Larchwood Glade and Devonshire Drive.’ A copy of the order is appended to this report [*See Appendix 1*].
- 1.2 In accordance with the Town and Country Planning Act 1990 and the Town and Country Planning (Trees Preservation) (England) Regulations 2012, the TPO was served upon the owner and occupier of the land affected by the TPO together with the owners and occupiers of any land adjoining on which the tree is situated.
- 1.3 As per the regulations, all interested parties were given 28 days to object and to make written representations regarding the Tree Preservation Order.
- 1.4 One objection to the order was received within the 28 days of serving [*Appendix 2*]. A formal response to objections made from the Council’s Arboricultural Officer to the objector did not provide a resolution to the objection and so the decision whether to confirm the order is therefore brought before the Planning Applications Committee. Details regarding the nature of the objection can be found within this report. It should be noted that the objector has stated that her son had also objected to the TPO, but no written record of this objection can be found.

**2.0 BACKGROUND**

- 2.1 Tree Preservation Order 09/23 was served on the 5<sup>th</sup> June 2023 to protect a Woodland Copse that is located between the two roads of Larchwood Glade and Devonshire drive and provides amenity to nearby residents as well as a habitat for wildlife.
- 2.2 The trees were protected via a Woodland TPO which protects all trees of all species including saplings and seedlings that grow up subsequently. The woodland designation is a means of protecting a woodland in order to ensure a means of long-term retention for areas of amenity and wildlife and trees which provide character to the street scene. Previous to this order there was an area order in place which only protected the trees growing at the time of serving. Since then, many trees have grown, fallen and regrown as part of a continuous cycle of natural regeneration. It is now those trees which will benefit from further protection.

### **3.0 POWER TO MAKE A TPO (RELEVANT LEGISLATION)**

- 3.1 The law on Tree Preservation Orders is contained in Part VIII of the Town and Country Planning Act 1990 as amended and in the Town and Country Planning (Tree Preservation) (England) Regulations 2012.
- 3.2 Under the Town and Country Planning Act (1990) local authorities may make a TPO if it appears to them to be expedient in the interests of amenity to make provision for the preservation of trees or woodland in their area. 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. In the Secretary of State's view, a TPO should be used to protect selected trees and woodlands if their removal would have a significant impact upon the local environment and its enjoyment by the public. Local planning authorities should be able to show that a reasonable degree of public benefit would accrue before the TPO is made or confirmed. The trees, or at least part of them, should therefore normally be visible from a public place, such as a road or footpath.
- 3.3 Trees may be worthy of preservation, amongst other reasons, 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 the 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 may be taken into account which alone would not be sufficient to warrant a TPO.

### **4.0 EXPEDIENCY**

- 4.1 In this instance the trees subject to the TPO are highly visible from both Devonshire Drive and Larchwood glade and are visible beyond and over the existing properties. *[Appendix 3 & 3a]*. The Local Authority was made aware that following the refusal of the planning application (See 4.3 below) that the land was being sold at auction. It was considered expedient to serve a new TPO to be reflective of the current land use and utilise TPO legislation to deter inappropriate development and tree removal which would harm the woodland and the surrounding character.
- 4.2 The woodland provides a positive impact on the natural environment by ensuring retention of important landscape features for the wider environmental benefits, enhancing the amenity of the area as well as maintaining the sylvan nature of the street scene. The majority of the woodland are pines which are reflective of historic land use and are in total keeping with the surrounding area. The trees provides amenity to not only the immediate residents but residents from further afield where they are prominent features on the sky line. The tree plays an important role in the wider context providing seasonal interest, ecological biodiversity benefits and it helps to break up the built form.
- 4.3 Protection of this tree is consistent with Policy DM9 (iv) of the Core Strategy and Development Management Policies 2012 that seeks to ensure that trees and vegetation worthy of retention are afforded protection. Furthermore, a previous planning application on this site for the erection of 3 no. two storey detached dwellings with private amenity area, parking and access (application reference 20/0752/FFU) was refused in March 2021. It was dismissed at appeal in February 2022 on the grounds of diminished enjoyment of the proposed properties, loss of trees, harm to protected trees and the impact on the trees and woodland of the proposal. *[see Appendices 4 and 4A for a copy of the appeal decision]*.
- 4.4 Highlighting the significant visual amenity of the woodland, at paragraph 7 of the appeal decision the Inspector states the following:

*'The development would directly affect, by their removal, almost a quarter of the approximately 200 trees assessed by the appellants. This would be a substantial reduction in*

*the number of trees. More than two-thirds of the trees lost would be Scots pine trees and more than three-quarters of the trees lost would be higher category B trees, including all but two of the Scots pines. Albeit, individually, mostly in the lowest B sub-category, these trees are nonetheless 'of moderate quality and value' and 'in such condition as to make a significant contribution'. Moreover, in my view, they also have significant visual amenity value collectively. Accordingly, there would also be a notable reduction in the prevailing species and quality of trees on the site.'*

- 4.5 The DEFRA (Department of Environment, Food and Rural Affairs) MAGIC GIS system has the woodland categorised as 'Priority habitat inventory – Deciduous woodland.' This means that the woodland is considered important for its tree coverage and the woodland and forms part of the national forest inventory.
- 4.6 It should be noted that a TPO is not designed to hinder the appropriate management of a tree. Any application to undertake work will be judged against good arboricultural practice and the Council would not withhold consent for appropriate works sympathetic to the current condition of the tree.
- 4.7 The serving of a Woodland TPO brings the site up to date, in that when the initial area order was served the woodland designation was not available and as such was not totally representative of the land use. The new TPO now protects the woodland character rather than just the trees at the initial serving.

## **5.0 REPRESENTATIONS**

5.0 Between the 7<sup>th</sup> June and the 25<sup>th</sup> July 2023 the Council received approximately 47 letters in support of confirming the TPO as shown. The main reasons for support are summarised below:

- The need for and to protect local wildlife corridors.
- The woodland provides character to the area
- Habitat value
- Aesthetic appeal of neighbourhood.
- Provides character to the area.
- The amenity value of the trees.

5.1 The Council also received one objection to the TPO from the landowner [Appendix 2]. As noted, it was referenced that a second objection was made by the landowner's son, but no written record is evident. The grounds of the objection have been summarised below:

- The TPO does not support the land at all and prevents woodland management.
- The woodland is not a public amenity (use of land).
- Trees, light, and general use.
- Removal of trees.

## **6.0 ARBORICULTURAL OFFICER'S RESPONSE TO OBJECTIONS**

*The TPO does not support the land at all and prevents woodland management:*

- 6.1 The woodland TPO is designed to prevent inappropriate development and tree removal with consent which would harm the woodland or the amenity it provides. The TPO does not include invasive species such as Laurel and Rhododendron which can be removed without consent of the Council (dependent on methods of removal). The objector is mistaken in that the TPO would prevent good woodland management. At this time no woodland management plan (WMP) has been submitted along with a tree works application to the Council for consideration and so the Council cannot comment on the appropriateness of the scheme. A well designed WMP is considered the most appropriate means to secure the long-term improvement of a woodland and the Council is unlikely to refuse such an application where such a proposal demonstrates clear and achievable outcomes. The Council agrees WMPs as a conditional part of a planning application for this very reason. The Council is unlikely to grant consent for works where it would pave the way for inappropriate development. *[See Appendix 2A for further reasoning].*

*The woodland is not a public amenity (use of land):*

- 6.2 The woodland is not a public amenity, for which the Council agrees. However, the woodland provides a public visual amenity for which a distinction exists. The presence of the trees both beyond and at the road frontages helps to soften the built form, provides cooling shade during summer and frames the street scene due to the visual amenity from their form and presence. The objector makes reference to the use of the land in a way not in keeping with the woodland setting including the keeping of animals (which can strip bark, killing trees and prevents natural regeneration through grazing pressure). A woodland is not the most appropriate means of keeping livestock, but the woodland order does not prevent the usual use of the space as an amenity for enjoying wildlife. *[See Appendix 2A for further reasoning].*

*Trees, lights, and general use:*

- 6.3 The objector references that the trees will grow and block light to the neighbouring properties. However, the trees on the boundary are already mature but the Council does not receive significant numbers of complaints about light within their gardens at this site. It should also be highlighted that there is no 'right to light' and generally this applies to a certain window under a prescription over a period of time but does not apply to trees. The TPO does not prevent pruning to trees under an application as long as it is justified with suitable levels of evidence as to the condition of the tree and that the proposed work would not impact on the overall health and longevity of the trees. The objector references the woodland as a garden. It is important to remember that the land is not tied to a dwelling per se and would not ordinarily be considered a 'garden.' Further to this, the TPO is a restriction on the land and is there to preserve the area as a woodland. As already mentioned, this land has been identified by DEFRA as Priority Habitat Inventory - Deciduous Woodland.

*Removal of trees:*

- 6.4 The objector stated that they wish to remove the dead and dangerous trees, however, there already is an exemption for this work. The legislation is clear in that the removal of dead branches can be carried out under an exemption. The removal of 'dangerous' trees reference imminently dangerous rather than perceived 'dangerous' trees and it is advised you seek professional advice before carrying out this work as it could be an offence to remove trees that do not fall under the exemptions. The listed 'dead' trees can also be removed without formal application as an exemption but again 5 days notice should be given to the Local Authority. Applicants wishing to exercise the exemption would need to provide the Council with 5 working days notice so that we may inspect the work proposed. It should be noted, however, that the retention of dead wood and trees in woodlands is a positive for ecology and biodiversity for which the applicant is keen to promote. With that in mind all dead

branches and trees removed should stay within the woodlands to boost the biodiversity levels.

- 6.5 The trees need to be fully assessed by a suitably qualified individual with the necessary woodland management experience and arboricultural expertise to advise on the woodland and have the trees inspected to ensure they remain in a practicable fashion. There also remains an original TPO across the land, irrespective of the woodland order which protects the dominant vegetation at this time. The new TPO is aimed to bring it in line with current land use and government guidance on the use of TPO's.

## **7.0 LEGAL ADVICE AND IMPLICATIONS**

- 7.1 Under the Town and Country Planning (Trees) Regulations 1999, before the local planning authority can confirm a TPO it must first consider any objections or representations duly made in respect of that order. Having considered any objections or representations, the local planning authority may then confirm the order with or without modification or may determine not to confirm the order. In terms of modifications to the order, there is no defined statutory limit on this power, although the Courts have held that this power cannot be used to effectively create a different order from the one originally imposed.
- 7.2 As the order contained a direction under Section 201 of the Town and Country Planning Act 1990 it took effect immediately upon the making of the order. If the order is not confirmed within six months of the date upon which it was made the TPO lapses, and the statutory protection would discontinue.
- 7.3 Once confirmed, the validity of a TPO may not be questioned in any legal proceedings whatsoever, except by way of an application to the High Court under Section 288 of the Town and Country Planning Act 1990 within six weeks from the date on which any order is confirmed.
- 7.4 The confirmation of the TPO has no additional financial implications for Surrey Heath, although there are resource implications in terms of officer workload for the processing of tree works applications in the future.

## **8.0 OPTIONS AND RECOMMENDATION**

- 8.1 The options available to the Committee are:
- To confirm the Order as originally imposed.
  - To confirm the Order subject to modifications; or,
  - Not to confirm the making of the Order.
- 8.2 It is recommended that Tree Preservation Order 09/23 is confirmed as originally imposed.

### **Background papers**

Appendices:

- Appendix 1: TPO order 09/23.  
Appendix 2: Objection response TPO  
Appendix 3: Larchwood Glade  
Appendix 3a: Devonshire drive

Appendix 4: Council decision  
Appendix 4a: Appeal decision