



**REPORT of
DIRECTOR OF PLANNING AND REGULATORY SERVICES**

to
**SOUTH EASTERN AREA PLANNING COMMITTEE
13 AUGUST 2018**

| | |
|---|---|
| Tree Preservation Officer | TPO 4/18 |
| Location | Paton Place, Nipsells Chase, Mayland |
| Proposal | Confirmation of TPO 4/18 |
| Confirmation by | 11.11.2018 |
| Case Officer | Emma Worby |
| Parish | MAYLAND |
| Reason for Referral to the Committee / Council | Decision on confirmation of a Tree Preservation Order as per the Council's scheme of delegation |

1. RECOMMENDATION

CONFIRM Tree Preservation Order (TPO) 4/18 without any modifications.

Please be aware that this item was deferred for consideration at the previous South East Area Planning Committee Meeting of 23 August 2017 in order for a site visit to take place, clarification to be provided on certain matters and a Tree Consultant to be in attendance when the item is considered. The following report has been updated to incorporate the previous Members' Update.

In relation to the clarification that was sought with respect to woodlands it is advised that the National Planning Practice Guidance sets out that:

"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."

In relation to fruit trees, the NPPG sets out that:

"The authority's consent is not required for carrying out work on a tree subject to an Order and cultivated for the production of fruit in the course of a business or trade if the work is in the interests of that business or trade."

2. SITE MAP

Please see overleaf.

| Tree Preservation Order | | Details | |
|--|--|--|--|
| TPO 4/18 | | | |
| | | | |
| <p>Copyright</p> <p>For reference purposes only. No further copies may be made. This map is reproduced from Ordnance Survey on behalf of the Controller of Her Majesty's Stationary Office © Crown copyright. Unauthorised reproduction infringes Crown copyright and may lead to prosecution or civil proceedings. Maldon District Council 100018588 2014</p> <p> MALDON DISTRICT COUNCIL</p> <p>www.maldon.gov.uk</p> | | <p>Scale: 1:2,000</p> <p>Organisation: Not Set</p> <p>Department: Not Set</p> <p>Comments: EW</p> <p>Date: 20/11/2017</p> <p>MSA Number: 100018588</p> | |

3. SUMMARY

3.1 An objection has been received relating to the serving of TPO 4/18 on twelve individual trees, three groups of trees and one woodland at Paton Place, Nipsells Chase, Mayland. The TPO protects the following trees:

- W1 – hawthorn with wild cherry, oak, apple pear and sloe trees
- G1 – 26 apple, 1 pear, 4 cherry and 5 plum trees
- G2 – 22 hornbeam trees
- G3 – 4 cypress trees
- T1, T2, T3, T4, T5, T7, T8, T9, T10, T11, T12, T13 – oak trees

3.2 This TPO is to replace a blanket area TPO 8/91. The current proposal is a more specific TPO that includes woodland, two groups of trees and twelve individual trees whose removal would have a significant negative impact on the local environment and its enjoyment by the public.

3.3 The objections remain unresolved; therefore the question of whether or not to confirm the TPO has been brought before members to determine

3.4 The Site

3.4.1 The trees which are subject to this TPO are located on the area of land that has recently been named as Paton Place and the woodland to the west between Nipsells Chase and North Drive. The area is located outside of the settlement boundary of Mayland. It is also listed as a local wildlife site ‘Nipsells Chase Scrub’ in the Local Development Plan (LDP) Policy N2, Natural Environment and Green Infrastructure.

3.5 Ownership

3.5.1 Land registry searches have been undertaken. All land affected is believed to be privately owned and all interested parties have been given the opportunity to comment on the serving of the TPO.

4. MAIN RELEVANT POLICIES

Members’ attention is drawn to the list of background papers attached to the agenda.

4.1 Corporate Plan 2015-2019

- Corporate Goals: 2. Protecting and shaping the District – 2.b. Protection and enhancement of the District’s distinctive character, natural environment and heritage assets.

4.2 Relevant Planning Guidance / Documents:

- National Planning Policy Guidance (NPPG)

4.3 Government Guidelines

- 4.3.1 Government guidelines advise that the Local Planning Authority (LPA) is required to take into account all duly made objections and representations before deciding whether to confirm the TPO.
- 4.3.2 If Members decide to confirm TPO 4/18, the owners have the right to make an application to the High Court to challenge the validity of the TPO. There are specific grounds on which this application must be made:
 - 1. that the TPO is not within the powers of the Act, or,
 - 2. that the requirements of the Act or Regulations have not been complied with in relation to the TPO.
- 4.3.3 There are costs involved in this procedure which can be awarded. An application must be made within six weeks of the date the TPO was confirmed.

5. MAIN CONSIDERATIONS

- 5.1 The trees which are the subject of the proposed TPO 4/18 are located at Paton Place between Nipsells Chase and North Drive and on the land behind Sea View Parade. The trees at this location are currently protected under the TPO 8/91 which is an 'area order' however, in line with government guidance, the Council believes this should be updated to better suit the characteristics of the current site. This is because the area order only covers trees standing at the time the TPO was made in 1991 but does not identify what trees are covered; this could lead to uncertainty about whether particular trees were present at the time of making the TPO and therefore TPO 4/18 would give a more accurate picture of the trees on the site. The government guidance document 'Tree Preservation Orders: A Guide to the Law and Good Practice' states that in the Secretary of State's view LPAs are encouraged to resurvey their existing TPOs which include the area classification with a view to replacing them with individual or group classifications where appropriate. Furthermore, the site has significantly changed since 1991 and it is considered that trees located on-site post 1991 now have a positive impact on the area.
- 5.2 The east part of the site nearest to Nipsells Chase is open in nature with a number of oak and fruit trees. The west part of the site, bordering properties on North Drive, is a more dense woodland area. There is a public right of way to the north of the area covered by the TPO linking the roads North Drive and Nipsells Chase however the majority of this path does not appear to be in use and is overgrown.
- 5.3 TPO 17/17 was served on 21.11.2017 for a similar area of land. In the process of considering appropriateness of confirming the TPO it was noted that a small number of trees to the north had not been included within the new TPO but were protected through the original TPO 8/91. The Council has therefore, decided to withdraw TPO 17/17 and serve a new TPO to include these other trees.
- 5.4 The trees on this site were assessed by an external consultant using the Tree Evaluation Method for Preservation Orders (TEMPO) with the trees scoring between 12 and 14 resulting in the conclusion being reached that a TPO would be defensible.

- 5.5 Woodland as described by the Forestry Commission, is 'land under stands of trees, with a canopy cover of at least 20% (or having the potential to achieve this), including integral open space and including felled areas that are awaiting restocking.' The quality of woodland depends on many things, amongst which are the age/species ranges of the trees, the presence and species diversity of ground flora and shrub layer. The TPO does not place any additional burden upon the owner to carry out works, it does however, require a formal application to be submitted and approved before carrying out works that may involve felling of trees and changes in the vegetative character of the area. If the owner prefers to submit a management plan, an application for a programme of works over time can be approved for up to a 5 year period.
- 5.6 Within the objection to the TPO (summarised below) it was stated that the woodland order W1 is not comprised of trees however the qualified arboriculturalist who assessed the site listed the present tree species as hawthorn with wild cherry, oak, apple, pear and sloe. Furthermore the existing area TPO 8/91 on the site also covers the area now listed as W1. The trees within this area in 1991 were specified as willow, oak, thorn and conifer. The objection also questions the amenity value and expediency of the group order G1. These two points have been assessed using the TEMPO methodology mentioned in section 5.4 and scored satisfactorily to warrant the issuing of a TPO. A second external tree consultant was asked to review the TPO and confirmed that the woodland is worthy of a TPO.
- 5.7 The area of trees and woodland covered by this TPO is large in size and is visible in the public realm from Nipsells Chase, Sea View Parade and North Drive. There are also a number of residential properties surrounding the site on both Nipsells Chase and North Drive. Due to the size of the site and its public location it is considered that the trees have a positive impact on the character of the area and their amenity value is considered to be significant. Therefore, the trees and woodland are considered to be important to the character of Mayland because of the large area they cover, their prominent position and their high amenity value.

6. **ANY RELEVANT SITE HISTORY**

Land South West of Nipsells Chase:

- **WTPO/14/01276** - TPO 08/91 Area 1 - Area marked by pink boundary on plan - Remove Blackthorn, Hawthorn and area of diseased/dead Elm. Retain 1-2m wide rooting area of boundary vegetation. Clear a 3m x 4m area for new access gate. T1 Blackthorn - Remove. T2 Hawthorn – Remove – Approved.
- **WTPO/14/00657** - TPO 08/91 - Area 1. Erect fence along line marked in red on plan JEP/MDC/TPOM/14/01 removing to ground level, any trees along this line. On plan land labelled EX14344 - all trees apart from viable fruit trees and perimeter trees plus any significant 'quality' to be cut down to ground level i.e.. roots removed to create a partially clear area which will then be planted with trees such as Horse Chestnut, Beech, Hazel, Sycamore et al. Viable fruit trees to be dealt with on an individual basis and selective pruning undertaken, where necessary and none removed. Area A as on plan - filter out the existing trees to produce an appropriate density. Further information submitted to clarify trees to be removed - Plan 1 re EX14344 and plan 3 re Area A. Trees to remain shown on Plan 2 re EX14344 and Plan 4 re Area A – Approved.

- **WTPO/08/00724** - TPO 08/91 Area 1 - If necessary, remove some trees to enable erection of boundary fence, others along boundary to be coppiced to hedge. Area A on plan - remove all trees apart from viable fruit trees and perimeter trees. Area B - coppice 50% of trees. (NB TPO only applies to trees that existed as trees at the time of serving 1991) – Approved.

Land North of Riversleigh:

- **DD/17/01060** - T1 - Elm - Fell. T2 - Wild Pear - Fell. T3 - Wild Pear - Fell. Can works proceed under 5 day dead and dangerous trees notice - Approved

7. **CONSULTATIONS AND REPRESENTATIONS RECEIVED**

7.1 **Representations received from Interested Parties**

- 7.1.1 One letter was received **objecting** to the TPO 4/18, the reasons for objection are summarised as set out in the table below:

| Objection Comment | Officer Response |
|--|---|
| <p>No objections to the individually listed oak trees T1-T13 inclusively or the hornbeams which comprise G2.</p> <p>It is difficult to understand why the trees in G1 are considered now to have or in the future be likely to attain sufficient amenity value so as to warrant preservation in the public interest.</p> <p>The trees in G1 have recently been planted and there is no expedient need to make them a subject of a TPO. I object to protection being applied to G1.</p> <p>The woodland W1 is not comprised of ‘trees’ or referable as ‘woodland’. It is a scrub of thicketed thorn and damson and therefore cannot be called woodland. TPOs do not protect plants that are not properly referable as trees and therefore W1 is ultra vires and cannot stand.</p> | <p>Comments noted</p> <p>G1 scored ‘3 - fair/satisfactory’ in the TEMPO amenity assessment which suggests that it would be ‘suitable’ for a TPO. Although G1 on its own may not be considered of suitable amenity value to warrant a TPO, the group of trees contribute to the amenity value of the site as a whole and therefore are considered suitable for preservation.</p> <p>The TEMPO assessment for W1 lists the tree species as hawthorn with wild cherry, oak, apple, pear and sloe, which are all considered to be acknowledged as trees (see site photo).</p> |

- 7.1.2 A further two letters of objection were received for the previous TPO 17/17 which was withdrawn. However, as TPO 17/17 related to the same area and trees, the objections have still been considered in the table above.

- 7.1.3 No letters were received **in support** of the TPO 4/18, however, one letter was received in support of the previous TPO 17/17 and therefore this will still be considered. The reasons for support are summarised as set out in the table below:

| Supporting Comment | Officer Response |
|---|-------------------------|
| We strongly support a tree preservation order on these trees as they have a major impact on the local wildlife including short eared owls, kestrels, sparrow hawks and woodpeckers. | Comments noted |

- 7.1.4 No letters were received **commenting** on the TPO 4/18, however, one letter was received commenting on the previous TPO 17/17 and therefore will still be considered. This letter is summarised in the table below:

| Comment | Officer Response |
|---|-------------------------|
| I agree with good old oak trees being preserved but they must be allowed to breathe and be healthy and not smothered. Disease will be rife if choked. They will grow too tall if not cleared at ground level. | Comments noted |

8. CONCLUSION

- 8.1 The trees and woodland, which are the subject of this TPO, offer a significant contribution to the character and appearance of the area on Nipsells Chase in Mayland, due to their prominent positioning and the large area they cover.
- 8.2 Therefore it is considered that the TPO should be confirmed to ensure that the local planning authority can assess any proposed works to the trees or felling of the trees which may affect the health or amenity value of the site.

9. SITE PHOTOS

Please see overleaf:

View into Paton Place from Nipsells Chase:



View in woodland area (W1):

