



**REPORT of
ASSISTANT DIRECTOR: PLANNING AND IMPLEMENTATION**

to
**CENTRAL AREA PLANNING COMMITTEE
31 JULY 2024**

Application Number	02/24
Location	Land adjacent Myrtle Cottage, Lock Hill, Heybridge Basin, Essex
Proposal	Confirmation of TPO 02/24
Applicant	Roy Chandler – Essex Waterways Ltd
Agent	N/A
Target Decision Date	20.08.2024
Case Officer	Juliet Kirkaldy
Parish	HEYBRIDGE BASIN
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) 02/24 without any modifications.

2. SITE MAP

Please see below.

Tree Preservation Order	Details
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Land adjacent Myrtle Cottage, Lock Hill, Heybridge Basin, Essex
TPO 2/24

G1 - 2x Horse Chestnut



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 Maldon District Council 100018588 2014


MALDON DISTRICT COUNCIL

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Scale:	1:750
Organisation:	Maldon District Council
Department:	Department
Comments:	TPO 2/24
Date:	14/02/2024
MSA Number:	100018588

3. SUMMARY

3.1 Proposal / brief overview, including any relevant background information

- 3.1.1 In January 2024, the Council received a notification under section 211 of the Town and Country Planning Act 1990, to fell two trees (Horse Chestnut) within a conservation area (24/00026/TCA).
- 3.1.2 Given the high visual amenity of the trees it was concluded that their removal would be an unjustifiable loss and the application was refused (24/00026/TCA) with a TPO served.
- 3.1.3 A Tree Evaluation Method for Preservation Orders (TEMPO) assessment, which is a nationally accepted system of scoring the amenity value of a tree, was carried out. The TEMPO assessment scored the trees 15 out of 25 and concluded that the two Horse Chestnut trees had defensible merits worthy of a TPO. Therefore, a TPO was served on 20 February 2024.
- 3.1.4 One letter of objection has been received relating to the serving of the TPO 02/24 located at the land adjacent to Myrtle Cottage, Lock Hill, Heybridge Basin, Essex.
- 3.1.5 The objection remains unresolved; therefore, the question of whether or not to confirm the TPO has been brought before members to determine.
- 3.1.6 For the purposes of the report going forward, the trees will be referred to as G1 x two Horse Chestnut.

3.2 The Site

- 3.2.1 The G1 x two Horse Chestnut trees (as identified in the TPO) are located to the northern side of Lock Hill within the designated Conservation area. The two Horse Chestnut trees are mature and prominently located adjacent to Myrtle Cottage and the tow path, north of the Chelmer and Blackwater Navigation.
- 3.2.2 The trees are highly visible from the public realm and therefore provide high amenity value. The trees are mutually suppressed, forming a homogenous crown outline. The trees appear to be of a typical condition for their age and species.

4. MAIN RELEVANT POLICIES

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

4.1 Town and Country Planning Act 1990 including section:

- 211 – Preservation of trees in conservation areas

4.2 Relevant Planning Guidance / Documents:

- National Planning Policy Guidance (NPPG)

Other Relevant Guidance:

- Wildlife & Countryside Act 1981 (as amended)
- The Conservation of Habitats and Species Regulations 2017

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 02/24, 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

- 5.1.1 The two Horse Chestnut trees are mature and prominently located adjacent to Myrtle Cottage and the tow path, north of the Chelmer and Blackwater Navigation. The trees are mutually suppressed, forming a homogenous crown outline. The trees appear to be of a typical condition for their age and species.
- 5.1.2 The trees are highly visible from the public realm and therefore provide high amenity value. Their removal would cause a substantial and significant impact and change to the character and appearance of the Conservation area in which it resides.
- 5.1.3 NPPG states (Paragraph 10 reference ID: 36-010-21040306) *'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. In some cases the authority may believe that certain trees are at risk as a result of development pressures and may consider, where this is in the interests of amenity, that it is expedient to make an Order. 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.'*
- 5.1.4 As part of the Section 211 notification, relating to the felling of the two Horse Chestnut trees, the applicant stated the following reason for the works in the application form, *'request to fell and remove T7 and T8 from insurance company acting for owners of the adjacent Myrtle Cottage due to subsidence at this property'*. The application was supported by a Geotechnical report (for Subsidence Management Services dated September 2022) and Preliminary Arboricultural Report (dated September 2022).
- 5.1.5 The Council's Arboricultural Consultant raised an objection to the felling of the trees stating that, *'the proposed specification of works is premature and unjustified at this stage and will result in the loss of a significant amenity feature'*. The Council's Arboricultural Consultant also made specific comments on the submitted Preliminary Arboricultural Report, Geotechnical and Root Identification Data stating that,
- *The geotechnical data from Bore Hole 1 states sampled soils are non-plastic (NP). This indicates that the local soils are unlikely to shrink and swell significantly under the influence of vegetative related moisture abstraction.*

- *No level monitoring has been provided and therefore it is impossible to determine whether the damage experienced is progressive or seasonal.*

- *No drainage survey is provided and therefore it is impossible to discount the possibility of damage being caused by faulty or damaged pipework serving the property.*

- *The submitted arboricultural report is preliminary in nature and appears to have been compiled on the assumption that the experienced property damage is a result of vegetative related subsidence.*

5.1.6 Therefore, the proposed works under the Section 211 notification were not considered to be suitably evidenced or justified.

5.1.7 In the interest of protecting these prominent landscape features and the amenity value of these trees within the locality, the Horse Chestnut trees were assessed using the TEMPO which is designed as a guide to decision making and stands as a record that a systematic assessment has been undertaken. The TEMPO considers all of the relevant factors in the TPO decision making chain including amenity assessment, expediency assessment and decision guide. Within the assessment the Horse Chestnut trees scored satisfactory for the suitability of a TPO for amenity due to their prominent size and location which is clearly visible within the public realm. The expediency assessment reflected the immediate threat of the trees as mentioned in section 5.1.3. The Horse Chestnut trees scored an overall total 15 out of 25 which means that the trees had defensible merits worthy of a TPO.

5.1.8 It should be noted that the TPO would not prevent future works to the trees from being carried out, however it would control any such works to ensure that they were suitable, justified and did not harm the health of the trees or the amenity value they offer to the surrounding area. Furthermore, TPO's can serve as a useful control by securing and protecting replacement planting which is not an option under a Section 211 notification. It is considered relevant to note that whilst no suitable Arboricultural justification for the works has been provided under this application, a subsequent Section 211 application could be submitted with such justification and without a TPO in place, the LPA would be unable to secure the replacement of such an important landscape feature.

6. ANY RELEVANT SITE HISTORY

- **24/00026/TCA – T7 and T8 (Horse Chestnut) – Fell. TPO Served.**

7. CONSULTATIONS AND REPRESENTATIONS RECEIVED

7.1 Representations received from Interested Parties

7.1.1 1 letter has been received **objecting** to the TPO 02/24 and the reasons for objection are summarised as set out in the table below:

Objection Comment	Officer Response
<i>The trees in question are located adjacent to Myrtle Cottage, one of the most important 'signal' buildings within,</i>	Noted.

Objection Comment	Officer Response
<i>and contributing to our villages Conservation area designation.</i>	
<i>We sympathise with the cottage's insurers demanding their removal. This action is essential to ensure long term continued stability to one of our villages Conservation areas most historic and notable ingredients.</i>	Noted.

8. **CONCLUSION**

- 8.1 The (G1) two Horse Chestnut trees, subject of the TPO, make a significant contribution to the character and appearance of the surrounding area due to their size and prominent location. Given that the TEMPO assessment scored high enough (15), for the trees to have defensible merits to serve a TPO, it is considered that the TPO should be confirmed to prevent the loss of the trees without first securing appropriate protection from the proposed works and a replacement tree if required and to ensure an ecological assessment takes place.