

Bath & North East Somerset Council

MEETING:	Development Management Committee
MEETING DATE:	1 st July 2015
TITLE:	Tree Preservation Order: Bath and North East Somerset Council (Land Between Meadow Park and Box Road, Bathford No. 7) Tree Preservation Order 2015
WARD:	Bathavon North
AN OPEN PUBLIC ITEM	
List of attachments to this report: Tree Preservation Order map Letter of objection Officers letter in response to the objection Table with summary of comments in support of the TPO. Bath Chronicle article Officers letter dated 2 nd December 2014	

1 THE ISSUE

- 1.1 A Tree Preservation Order titled Bath and North East Somerset Council (Land Between Meadow Park and Box Road, Bathford No. 7) Tree Preservation Order 2015 (“the TPO”) was provisionally made on the 31st March 2015.
- 1.2 The TPO was made in order to protect woodland in a parcel of land shown on the accompanying map which is considered to make a contribution to the landscape and visual amenity of the locality.
- 1.3 An objection letter has been received from Mr P Waters, the owner of the woodland within the TPO.

2 RECOMMENDATION

- 2.1 The Development Management Committee is asked to confirm the Tree Preservation Order entitled Bath and North East Somerset Council (Land Between Meadow Park and Box Road, Bathford No. 7) Tree Preservation Order 2015 without modification.

3 FINANCIAL IMPLICATIONS

- 3.1 Financial: Under the law as it stands the owner of a woodland cannot claim compensation from the Council for making it the subject of a tree preservation order. However if a tree/s within the woodland is/are covered by a tree preservation order, and the Council refuses an application to fell the tree/s, the owner may be able to claim compensation if he or she suffers a loss or damage as a consequence of that refusal.
- 3.2 Staffing: None.
- 3.3 Equalities:
- 3.3.1 The European Convention sets out a number of rights. It is unlawful for a public authority to act in a way which is incompatible with a European Convention right unless the authority could not have acted differently.
- 3.3.2 The Human Rights Act 1998 contains a series of Articles taken from the European Convention. The Articles relevant to the making of a tree preservation order are; Article 6 – the right to be heard before a properly heard tribunal; Article 8 - the right of respect for family and private life and Article 1, Protocol 1 – the peaceful enjoyment of possessions
- 3.3.3 A public authority must not interfere with an individual's human rights unless that interference is proportionate with achieving a legitimate aim. Confirmation of the TPO is however, considered to be a proportionate interference in the wider public interest.
- 3.4 Economic: None.
- 3.5 Environment: The woodland which is the subject of this report makes an important contribution to the visual amenity and landscape in the local area.
- 3.6 Council Wide Impacts: The confirmation of the TPO will involve officers from Legal Services. Officers from Development Management will need to take account of the woodland when considering any application for development or alterations on the site which might affect it.

4 THE REPORT

4.1 Background

- 4.2 The woodland which is the subject of the TPO is a primarily mixed deciduous wood growing on south sloping land surrounded by Meadow Park and Box Road which is visible from Meadow Park, Box Road and the wider landscape to the south.
- 4.3 The Order was made because officers received communications from local residents who were concerned that indiscriminate tree felling had commenced in the woodland which was not at that time protected by a TPO or conservation area designation.
- 4.4 The felling activities on the site were of sufficient significance to result in the Forestry Commission investigating to determine whether a felling licence was required (decision pending at the time of this report) and for the activity to

generate local media interest. An article from the Bath Chronicle posted on 4th April 2015 is attached.

4.5 Councillor Ward requested that the remaining trees were protected as a result of the activities.

4.6 The woodland provides an important visual amenity and contributes to the landscape character of the locality so a TPO was considered appropriate.

4.7 Responses to the Tree Preservation Order

4.8 The Council is required to take into account all duly made objections and representations before deciding whether to confirm the TPO.

4.9 Bathford Parish Council has written in support of the TPO and 31 local households have made representations in support of the TPO. A summary of these representations has been attached to this report. The number of representations received in support of the TPO and against the tree felling is unprecedented and demonstrates the amount of community interest in the site.

4.10 One letter of objection has been received from the owner of woodland within the TPO. As a result of this objection the decision on whether the TPO should be confirmed or not must be made by Councillors. Committee Members are advised to read the letter of objection, the summary of the consultation responses and officer's response; all of which are attached.

4.11 The main objections are summarised below.

- i) The owner considers that he was acting on recommendations from the Councils Senior Arboricultural Officer.
- ii) The TPO restricts the management of the land.
- iii) The owner does not think that it is justified that the Council could refuse future maintenance works.
- iv) The TPO has prevented outstanding works from being completed and the owner does not consider that the woodland is safe.

4.12 The objections to the Tree Preservation Order outlined in section 4.11 above have been considered by the Officer and the following comments are made in respect of each point:

- i) The Senior Arboricultural officer sent a letter to Mr Waters dated 2nd December 2014 as a result of concerns expressed by residents in Box Road regarding the trees behind their home (a copy of the letter is attached to this report). The residents had attempted to make contact with Mr Waters but had not received a response. The letter sought Mr Waters' assurance that he was aware of his duty of care under the Occupiers' Liability Acts of 1957 and 1984 and asked if the trees around the perimeter of the land had been inspected regularly to ensure that they posed no undue risk to neighbouring properties. E-mail responses from Mr Waters on 16th February 2015 stated that he had arranged for the thinning out of smaller trees leaving the ground cover so that the larger trees could be assessed. The

significant felling which was subsequently undertaken did not reflect this. An Arboricultural officer visited the site to collect information regarding the activities as result of communications received from residents regarding the tree felling. The findings made by the officer were that the contractor had not been given 'the go-ahead to carry on' as stated in the objection letter.

- ii) The TPO does not prevent reasonable management of the land. Proactive management of woodland is encouraged and supported. The development of a management plan for the site would be supported and could accompany an application for works phased over a number of years. Should any work require a felling licence then the Council would not be able to consider an application. A felling licence would need to be obtained from the Forestry Commission and the Council would be consulted due to the presence of the TPO.
- iii) Applications for works which are supported with sound arboricultural justification will be favourably received. The Council can ensure that Bathford Parish Council and adjacent households are notified of any proposals and have an opportunity to comment.
- iv) The removal of dead or dangerous trees is exempt from the requirement to make an application. The owner indicates that they have sought advice from an arboricultural advisor which is welcomed. The adviser can provide him with guidance on what works would be exempt and, in which case, what the process would be to deal with that particular situation.

4.13 Relevant History

4.14 None recorded.

5.0 LEGAL AND POLICY FRAMEWORK

Tree Preservation Order

5.1 A tree preservation order is an order made by a local planning authority in respect of trees and woodlands. The principal effect of a tree preservation order is to prohibit the:

Cutting down, uprooting, topping, lopping, wilful damage or wilful destruction of trees without the council's consent.

5.2 The law on tree preservation orders is in the Town and Country Planning Act 1990 and in the Town and Country Planning (Tree Preservation) (England) Regulations 2012 which came into effect on 6th April 2012 .

5.3 A local planning authority may make a tree preservation order if it appears

“Expedient in the interests of amenity to make provision for the preservation of trees or woodlands in their area”

5.4 The Council's Arboricultural Officers have a written method for assessing the 'Amenity' of trees and woodlands. This is in keeping with Government guidance, and takes account of the visual impact of trees and their contribution to the landscape, their general overall health and condition, their longevity and their possible or likely impact on services and property.

5.5 This assessment concluded, having taken account of, visual amenity, tree health considerations and impact considerations, that it would be expedient in the interest of amenity to make provision for the preservation of the tree. The TPO was made on 31st March 2015 and took effect immediately and continues in force for a period of six months.

Planning Policy

5.6 Bath and North East Somerset Local Plan including minerals & waste policies 2007

C2.22 'Trees are an important part of our natural life support system: they have a vital role to play in the sustainability of our urban and rural areas. They benefit:

- the local economy – creating potential for employment, encouraging inward investment, bringing in tourism and adding value to property;
- the local environment by reducing the effects of air pollution and storm water run off, reducing energy consumption through moderation of the local climate, and providing a wide range of wildlife habitats;
- the social fabric in terms of recreation and education'

C2.23 'Much of the tree cover in the urban areas is in a critical condition and there is little or no replacement planting for over-mature trees in decline. Infill development has often reduced the space available for planting large tree species. In addition, new tree planting takes many years to mature. The management and retention of significant trees is therefore pressing'

C2.25 'Bath & North East Somerset has a duty under the Town and Country Planning Act 1990 to ensure tree and woodland preservation wherever it is appropriate. The Council will continue to protect trees and woodlands through Tree Preservation Orders (TPOs) as appropriate. There is also a level of protection afforded to trees in Conservation Areas (CAs). However there are many trees of value outside these designations and careful consideration should be given to the removal of any tree'

6. CONCLUSION

6.1 The woodland contributes towards the local visual amenity and is valued by the local community as a result of this and the wildlife which it supports. This is demonstrated by the support from Bathford Parish Council and the unprecedented number of representations received in support of the TPO and against the tree felling from surrounding households.

6.2 Confirmation of the TPO would ensure the retention of the woodland and the woodland designation ensures protection for not only those trees currently present but also trees developing from regenerating stumps, natural regeneration and planting. However, an application supported by sound arboricultural reasons for pruning or felling as the need arose in the future can be made under the TPO if the works proposed do not require a felling licence. The Council will then be able to condition the quality of the workmanship and appropriate replacement planting if considered appropriate.

6.3 In keeping with the Council's commitment to conserve and enhance the environment, it is recommended that the Committee confirm the TPO without modification.

Contact person	Jane Brewer 01225 477505
Background papers	The provisional Tree Preservation Order documentation and correspondence can be viewed by contacting Jane Brewer on the above telephone number.