

## Bath & North East Somerset Council

MEETING:	Development Control Committee
MEETING DATE:	11 April 2012
TITLE:	Tree Preservation Order: Bath and North East Somerset Council (Land Adjacent to Tesco, Old Mills, Paulton No. 12) Tree Preservation Order 2011
WARD:	Paulton

### AN OPEN PUBLIC ITEM

#### List of attachments to this report:

Plan of Site

Copy of letter of objection to the Tree Preservation Order

Copy of correspondence in support of the Tree Preservation Order

## 1 THE ISSUE

1.1 An objection has been received on behalf of Tesco Stores Limited following the making of the Tree Preservation Order entitled Bath and North East Somerset Council (Land Adjacent to Tesco, Old Mills, Paulton No. 12) Tree Preservation Order 2011 ("the TPO"), which was provisionally made on the 23 November 2011 to protect a belt of trees ( identified as W1 within the TPO ) and individual Oak ( identified as T1 ) which make a significant contribution to the landscape and amenity of the area. The objection specifically relates to the section orientated north-south and not to the southern section classified as woodland within the TPO or to T1.

## 2 RECOMMENDATION

2.1 The Development Control Committee is asked to confirm the Tree Preservation Order entitled Bath and North East Somerset Council (Land Adjacent to Tesco, Old Mills, Paulton No. 12) Tree Preservation Order 2011 without modification.

### **3 FINANCIAL IMPLICATIONS**

3.1 Financial: Under the law as it stands the owner of a tree cannot claim compensation from the Council for making a tree the subject of a tree preservation order. However if the tree is covered by a tree preservation order and the Council refuses an application to fell the tree, 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: In deciding to make the TPO the provisions of the Human Rights Act 1998 have been taken into account. It is considered that Article 8 (right to respect for private and family life) and Article 1 of the First Protocol (protection of property) of the convention rights apply in this matter. 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 trees which are the subject of this report make an important contribution to the landscape and amenity of the local area.

3.6 Council Wide Impacts: The confirmation of the TPO will involve officers from Legal Services and Officers from Development Control will need to take account of the trees when considering any application for development or alterations on the site which might affect the trees.

### **4 THE REPORT**

#### **4.1 Background**

4.2 The trees which are the subject of the TPO are a belt of trees to the east and south of the car park serving the Tesco store and one mature Oak growing within the adjacent field to the east, encircled within the black line and marked W1 and T1 respectively on the attached plan.

4.3 A planning application, reference 11/03824/FUL, was received for the erection of an extension to the existing Class 1 retail food store, re-location of the petrol filling station and associated works which included extending the car park to the east which would result in the loss of the eastern part of the belt of trees.

4.4 The trees within the site were assessed and the tree belt to the east and south and the individual Oak were considered to be of sufficient landscape merit to be worthy of a Tree Preservation Order.

#### **4.5 Letter of objection to the Tree Preservation Order**

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

4.7 One letter of objection has been received on behalf of Tesco Stores Limited. The Committee are advised to read the letter of objection attached.

4.8 The main objections are identified and summarised below.

- i) The contribution to the local amenity and landscape of the eastern section of the woodland belt is not considered to be significant criteria for the making of the TPO.
- ii) An arboricultural assessment was undertaken to inform the redevelopment proposals and the individual trees within the eastern section were considered to be C category trees as defined within the British Standard BS 5837:2005 (

trees in relation to construction. Recommendations) and B category as a collection.

- iii) The redevelopment proposals made provision for replacement planting to mitigate for the loss of the eastern section of the tree belt.

4.9 The objections to the Tree Preservation Order outlined in section 4.8 above have been considered by Officers and the following comments are made:

- i) The Councils Arboricultural Officer has assessed the trees for amenity value as part of the TPO process and found that the trees were important within the locality. The trees are visible to the general public and are in reasonable condition with an acceptable safe useful life expectancy. In addition, the section of the tree belt which is the subject of the objection contributes towards screening the site and associated artificial lighting. The tree belt is also mentioned within the Ecological Assessment submitted as part of the planning application which states that the belt provides a corridor for foraging opportunities for bats which links to woodland beyond the site.
- ii) The arboricultural survey submitted with the planning application does not conflict with the TPO assessment. Whilst the arboricultural survey may identify the southern and eastern belts with separate reference numbers, the survey results and comments are the same for both within the report. BS 5837:2005 recommends a method of categorising the quality of trees on development sites based on their quality and arboricultural, landscape, cultural and conservation values. The arboricultural survey included within the planning application categorised both the southern and eastern tree belts as B1 and B2 which is defined within the British Standard as trees of moderate landscape and conservation quality. The trees within the eastern belt have been assessed collectively for the purposes of the TPO which is considered appropriate given their proximity to each other and appearance which is considered to be similar to those trees along the southern boundary. This is why the eastern and southern boundary trees have been included as one woodland rather than two sections within the TPO. It is not considered appropriate to TPO individual trees within the belt.
- iii) The tree belt is currently at a sufficient distance from neighbouring properties to allow for future growth in height and spread whilst limiting any adverse impact on adjacent properties. The drawings of the proposed landscaping submitted as part of the planning application indicated that on the most vulnerable corner of the site, near to the south east, replacement planting would be less than half the width of that being removed. In summary, the proposed replacement planting is not considered to adequately mitigate for the loss of the existing eastern tree belt. In addition to the above, The Oak which has been protected by the TPO is currently buffered and protected behind the current tree belt from intensive activities, however, the proposal exposed this tree to increased risk assessments and possibly unsympathetic management.

Correspondence in support of the TPO is attached.

## **4.10 Relevant History**

4.11 11/03824/FUL - Erection of an extension to the existing Class 1 Retail food store, re-location of petrol filling station and associated works - REFUSED

## **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 6<sup>th</sup> 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 considered to be under threat. This is in keeping with Government guidance, and takes account of the visual impact of the 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 trees. The TPO was made on 23 November 2011. This 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'

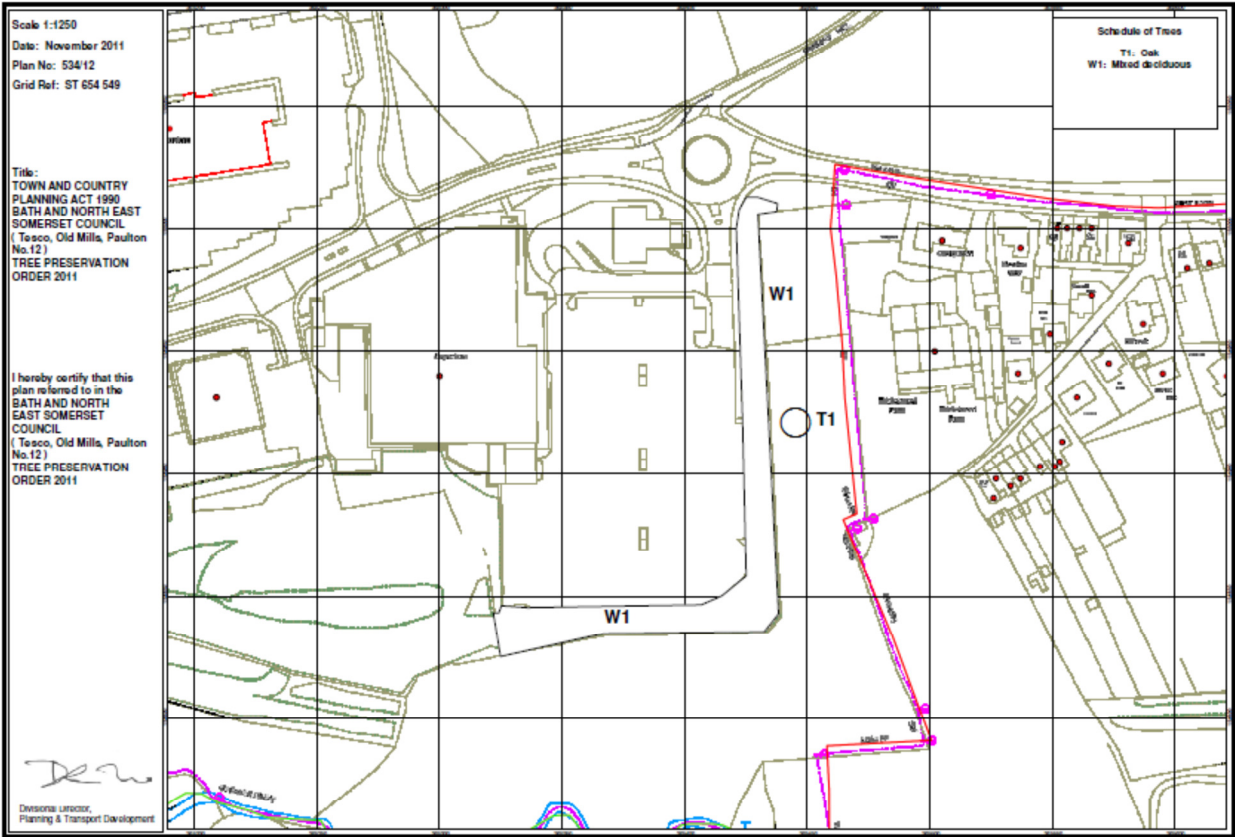
## **6. CONCLUSION**

6.1 The trees make a significant contribution to the landscape and amenity of the area.

6.2 Confirmation of the TPO would ensure the retention of the trees. Should it be found in the future that it would be unreasonable to retain the trees the Council will then be able to ensure appropriate replacement planting.

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.

<b>Contact person</b>	Jane Brewer 01225 477505
<b>Background papers</b>	The file containing the provisional Tree Preservation Order, relevant site notes, documentation and correspondence can be viewed by contacting Jane Brewer on the above telephone number.



Date: January 2012

Document Reference: 8115 AA AN 01 (Revision A)

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BATH AND NORTHEAST SOMERSET COUNCIL TREE PRESERVATION ORDER 2011,  
 TESCO, OLD MILLS, PAULTON NO.12: ARBORICULTURAL OBJECTION

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Dear Jane,

On behalf of Tesco Stores Limited and their right to appeal on account of their development interest in land affected by the TPO (ref application no.11/03824/FUL, we wish to object to the Council's decision to confirm the above Order in its current form. Having read and understood TPO No.12 we believe that it is not expedient to make a TPO which includes all of the area identified as W1 on the associated TPO schedule and plan. Our objection explicitly relates to the linear collection of trees within a landscape belt (orientated north-south) representing the eastern extent of W1. We are not objecting to the confirmation of the TPO on the southern belt of W1 or the Oak scheduled as T1. Our objection is based on the following points listed A to C.

**A.** In justifying TPO No.12, North East Somerset Council suggests that trees within W1 help to 'make a significant contribution to the local amenity and the landscape of the area'. We do not agree that it is reasonable to describe the existing contribution of this part of W1 as 'significant'; the eastern extent of W1 is visible for only short distances along the immediate A362 approach to the existing Tesco Store site, whilst intervening built form and varied topography significantly restrict views of the trees from the wider area and landscape setting.

**B.** To inform Tesco's proposals for redevelopment of the existing store site, we have undertaken an arboricultural assessment of all trees likely to be influenced by the proposals; this assessment has been consistent with the rhetoric of the British Standard for Trees in

Relation to Construction (5837:2005). Within this assessment the trees within W1's eastern extent have been judged to individually fulfil the criteria of category 'C', i.e. to be of only low arboricultural quality and value. We have nonetheless acknowledged that the belt does provide a degree of containment to the site, and have subsequently conferred a higher rating of category 'B' to the trees as a collection.

Within the proposed context we have concluded that it is not practicable to protect (or integrate) this area of trees within the proposed setting, irrespective of potential status. We have subsequently shown these trees removed to implement development and consider this opinion to be justified from the arboricultural perspective. Our recommendation for removal has been subject to the provision of mitigation replanting.

We have not received any explicit objection to the removal of these trees during previous consultation response with Bath and Northeast Somerset Council (correspondence dated as recently as 07.11.11).

C. The Landscape Supporting Statement for this development states that the provision of a substantial landscape buffer will mitigate for the clearance of W1's eastern extent and fully integrate the development. The proposed landscape buffer ranges from 6m width up to 30m around a retained Oak tree (also subject to the TPO, scheduled as T1) and incorporates a native woodland mix. The proposed woodland mix includes a variety of sizes and heavy standard trees to provide impact from day one and will further mature over time to provide a robust landscape buffer (this is illustrated on the submitted Landscape Masterplan and detailed planting plans). The proposed tree, shrub and woodland structure planting will provide appropriate replacements of improved longer-term potential that will mature, adding to retained key landscape buffers to south and west (including the southern line of W1). These measures will ensure that the high level of containment and separation that is currently afforded to the site is maintained. It is therefore our opinion that the new plantings will ensure that there is no detrimental impact upon residential amenity.

**Conclusions:**

It is our opinion that the confirmation of TPO No.12 in its current form is not expedient in the interest of amenity. Inclusion of the western extent of the area scheduled as W1 is strongly contested on the grounds that the 'amenity' value assessed for this area of trees is not consistent with the criteria listed within current TPO advice for good practice. The Councils



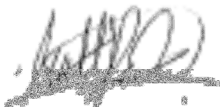
assessment of amenity impact for this area of trees can only be based on the collective public visibility of the trees. The eastern extent of W1 is of limited visibility which should have been reflected in the Council's assessment; moreover public visibility is not sufficient to warrant a TPO in itself (DCLG 2006).

Proposed development has been informed by an arboricultural survey and the subsequent layout has evolved around the retention of a mature free-standing Oak (scheduled as T1 within TPO No.12) and existing boundary tree cover (the southern belt of W1). To implement this development, clearance of W1's eastern extent is considered justified from the arboricultural perspective, subject to mitigation replanting and the retention of the key mature vegetated boundaries.

Substantial replacement landscape planting has been proposed to mitigate the clearance of W1's eastern extent as shown on the previously submitted Landscape Supporting Statement. These measures will ensure that the degree of containment that is currently afforded is retained. It is therefore our opinion that clearance of this area is supportable in terms of landscape and visibility, contrary the Council's own assessment.

We respectfully request that the TPO be revised to not include the eastern extent of W1 as currently shown.

Yours sincerely



Neil Farnsworth, arboriculturist  
(Aspect)

**Further Reading and Supporting Material:**

British Standards Institution Publication (2010), BS 3895: Recommendations for Tree Work, BSI, London

British Standards Institution Publication (2005), BS 5837: Trees in Relation to Construction, BSI, London

Department for Communities and Local Government (March 2000) Tree Preservation Orders: A guide to the Law and Good Practice, DCLG, London



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22 December 2011

Dear Jane

Please note that Paulton Parish Council strongly supports the permanent implementation of the Tree Preservation Order 2011 for Tesco, Old Mills, Paulton No 12.

The above statement refers to the Oak tree in a field to the east of the existing Tesco, Old Mills, Paulton and the mixed deciduous woodland located along the southern and eastern boundary of the existing Tesco car park.

Members agree with the statement that the trees make a significant contribution to the local amenity and the landscaping of the area.

Yours sincerely

A handwritten signature in cursive script that reads 'Judith Plucknett'.

Judith Plucknett  
Clerk

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