

REPORT FROM: Planning, Economic Development & Regulatory Services Manager

TO: Colne and District Area Committee

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**CONFIRMATION OF TPO/NO4/2021 – LAND TO THE EAST OF KNOTTS LANE,
COLNE**

PURPOSE OF REPORT

For Committee to decide on the confirmation of TPO/NO4/2021 – Land to the East of Knotts Lane, Colne following an objection.

RECOMMENDATIONS

1. Confirm the Tree Preservation Order.
2. Delegate responsibility for the management (including variation or revocation) of the TPO to the Planning, Economic Development & Regulatory Services Manager.

REASONS FOR RECOMMENDATIONS

1. To ensure the protection of the trees contained within the Order.
2. Efficient management of the Tree Preservation Order.

ISSUE

1. An emergency Tree Preservation Order was issued on the land known as the Lenches in March 2021 (TPO/NO2/2021 – See appendix 1) due to works being carried out on the land by a prospective developer. This was an emergency measure and protected all trees on the site including some of which that would not be considered worthy of protection.
2. A new order was created on the 3rd July 2021 (TPO/NO4/2021 – See Appendix 2). This order replaces the emergency order and protects all the trees that are worthy of protection and provide amenity value to the area.
3. Both orders were served on parties with an interest in the land.
4. An objection to the Tree Preservation Order was received by the Principal Environment Officer on the 28th July 2021.

5. The agent for the interested parties objects on the following grounds (see appendix 3):

- The current order (TPO/NO4/2021) creates significant ambiguity;
- The reasons for making the Order have not been properly explained;
- The documents supporting the Order provide no source of guidance;
- The Order seeks to protect trees that are not worthy of protection;
- The use of an Area designation is not appropriate;
- The map attached to the Order is at a scale that is unusable, is inaccurate and does not contain the common seal of the Council;
- The Order fails to recognize the current development proposed for the site.

To address these points:

The current order creates significant ambiguity

The original Order (TPO/NO2/2021) has not been confirmed and there is no requirement for a deed of revocation. The Order has been endorsed as not confirmed, all parties notified and has been withdrawn from public inspection. As a result it is clear that the original Order has no standing any longer and that the new Order (TPO/NO4/2021) supersedes the emergency Order.

The reasons for making the Order have not been properly explained

The reason for the Order is included within the Regulation 5 notice served with the Order documents and being *'the trees have high amenity value and are important in the local landscape'*. There is no requirement within the guidelines or law to go beyond this and supply information relating to the assessment of the trees when serving an Order. The Council use the TEMPO method of evaluating trees suitable for Tree Preservation Order. A copy of the assessment can be found in appendix 4.

'Amenity' is not defined in law however, the guidance notes are clear and what this should mean.

'Orders should be used to protect selected trees and woodlands if their removal would have a significant negative impact on the local environment and its enjoyment by the public. Before authorities make or confirm an Order they should be able to show that protection would bring a reasonable degree of public benefit in the present or future.'

It is the Officers opinion that the trees listed in the Order would meet the requirements of this paragraph.

The documents supporting the Order provide no source of guidance

As stated in the objection there is no requirement to supply guidance within the regulation 5 notice. The Government guidance notes and legislation are freely available and easily found on the internet.

The Order seeks to protect trees that are not worthy of protection

The paragraph within the objection makes specific reference to the woodland area (W1 on the Order). While there may be some trees that are dead or in various states of decline, the majority of the woodland is in good, healthy condition and provides a high degree of amenity value not just to the local area but the wider town. It is normal for any woodland to have trees in various states of condition and demonstrates a healthy ecosystem. The serving of the Order does not prevent any work being carried out that the landowner or their

representatives are legally allowed to do under any exemption. Any work that is required to prevent a hazard to the highway can be applied for through the normal application processes. The use of the woodland category in this area seeks to protect the woodland as a whole and ensure its integrity remains for future generations. The guidance notes are clear on the use of the woodland category:

‘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.’

Trees of any size or species can be protected (paragraph 11 of the Government guidance notes). While Elder maybe a short lived species (on average 60 years) they do have cultural significance. The trees are clearly visible from Footpath 189 and from the informal paths that have been used for a significant amount of time. As a result, it is the opinion of officers that they do contribute to the amenity value of the site.

The use of an Area designation is not appropriate

As stated earlier the guidance notes allow for trees of any size and species to be protected for the public benefit in the present or the **future**.

The two areas marked on the plan are areas of young trees that at present do not fall into the woodland category and too cover large of an area to be described as a group. Area 1 on the Order will provide screening of the adjacent caravan park and will form a wildlife corridor from the hedge to woodlands and corridors. It will also be clearly visible from footpath 189. Area 2, once matured will be in close proximity to the woodland on the southern elevation of the site and follows the route footpath 189. This will provide connectivity to other woodland environments close by and amenity value to users of the public right of way.

As such the area designation was used and will be reviewed in the future as part of normal Preservation Order management practices.

The map attached to the Order is at a scale that is unusable, is inaccurate and does not contain the Common Seal of the Council

As the area of the site is large, a large map is required to have sufficient scale, detail to be usable, mark the trees in such a way that they are identifiable and keep it to one map rather than several sheets. A printed copy of the plan at scale is available from the Council at a charge. Large scale plans can also be printed off at local copy shops or by ordering online. No specialist software or printers are required by those affected by the Order. Digital copies of the Order were also served which contain the plan as a PDF file.

There is no requirement within the legislation to be ‘pinpoint accurate’. As such the marks boundaries of the trees may go beyond that of the physical canopy of the tree to ensure that all the information on the map can be clearly identified on the ground. The mapping is carried out using a mixture of Google Earth and MapInfo GIS software as such it is accurate enough to identify the trees protected by the Order. It is important to point out that both the map and schedule should be used to identify the protected trees. The schedule also includes eight figure grid references for each item listed on it.

There is no requirement for the map to have the Seal of the Council. As the original documents are kept together and digital documents are used for daily administration it is not

necessary for the Council to seal both.

The Order fails to recognize the proposals for the development of the site

While the Council may be aware that there is a proposal for development on the site, an application has not come forward. The original Tree Preservation Order was raised after the Council became aware that some ground survey work was being undertaken and prevents clearance of trees prior to the submission of the application.

6. The hedgerow adjacent to Lenches Road cannot be protected by Tree Preservation Order. However, it is afforded protection under the Hedgerow Regulations 1997.
7. There is no right of appeal to the Secretary of State for the making of or confirmation of an Order. The validity of an Order cannot be challenged in any legal proceedings except by way of application to the High Court on a point of law.
8. To ensure the continued protection of the trees it is advised that the Preservation Order be confirmed.

IMPLICATIONS

Policy:

None arising out of the report.

Financial:

None arising out of the report.

Legal:

Tree Preservation Order are made using powers delegated to the Local Planning Authority by Part VIII of the Town and Country Planning Act 1990 as amended and the Town and Country Planning (Tree Preservation) (England) Regulations 2012

Risk Management:

None arising out of the report.

Health and Safety:

None arising out of the report.

Sustainability:

None arising out of the report.

Community Safety:

None arising out of the report.

Equality and Diversity:

None arising out of the report.

APPENDICES

Appendix 1 – TPO/NO2/2021

Appendix 2 – TPO/NO4/2021

Appendix 3 – Letter of objection

Appendix 4 – TEMPO Assessment

LIST OF BACKGROUND PAPERS