

Planning Committee



Other Matters

14th March 2024

TP/23/0004



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Site:	Land South Of 70 Janes Lane Burgess Hill West Sussex
Title:	Mid Sussex District (No.4) Tree Preservation Order 2023
Parish:	Burgess Hill
Ward Members:	Cllr Christine Cherry / Cllr Matthew Cornish /
Case Officer:	Irene Fletcher

1. INTRODUCTION

- 1.1 Members are being asked to either confirm or not confirm a new Tree Preservation Order (TPO), TP/23/0004, on an area of land south of Appletree Close, Janes Lane, Burgess Hill.
- 1.2 The site has been subject to a previous Order, ref TP/23/0002, which was made as an emergency measure, following confirmed reports of tree felling on the site. This was an area Order which was not confirmed but was replaced by this Order.
- 1.3 It is considered that the Order should be confirmed. This matter is before Members as an objection on behalf of the owners of the site has been received.

2. BACKGROUND

- 2.1 A number of important oaks on the site were 'ringbarked' which will be likely to cause the slow death of these trees. Other damage was noted to trees and understorey when the Council's Tree Officer visited and made the first Order, above.
- 2.2 The current TPO includes two individual Orders on oaks; T1 and T2, three group Orders, G1, G2, G3 and G4 and woodland Order, W1.
- 2.3 A public footpath (ref BUH/4BH/1) runs adjacent to part of the site and Janes Lane runs adjacent to part of the site. There is some visibility of the trees from both locations.

3. THE OBJECTION

- 3.1 An objection has been received on behalf of the owners of the site on a number of grounds, mainly in relation to a TEMPO assessment which has been carried out on behalf of the owner. A TEMPO assessment is usually carried out by the Council's Tree Officer during the course of making an Order and, as such, is subjective. The objection, in summary, is as follows:
 - T1 is a middle-aged oak tree with a relatively long-life expectancy. They have no objection to an Order being placed on this tree.
 - T2 is a small, young oak tree with defects. It has a long-life expectancy. The tree is not visible to the public. Object to an Order being placed on this tree.
 - Tree group G1 is a field boundary group of trees that includes oak, sycamore, field maple and blackthorn. The objection advises that they have carried out individual TEMPO assessments on each species. They conclude that all but the blackthorn is defensible.
 - Tree group G2 is a field boundary group of trees that includes oak, hornbeam, blackthorn, hawthorn and goat willow. Due to lack of public visibility, they believe that the blackthorn and goat willow should not be protected, and that

regular maintenance would be prevented. Advise that group should be split and only some understorey protected. They also consider that the goat willow does not qualify for a TPO because it was planted 10 – 15 years ago.

- Tree group G3 is a field boundary group of trees that include oak, blackthorn, hawthorn, hornbeam and goat willow. They consider that only the oak, hornbeam and hawthorn merit a TPO, due to lack of public visibility. They state that they are only visible from the nearby housing estate in views between and over houses. They advise that the group should be modified to exclude goat willow and blackthorn.
- G4 is a field boundary group, including oak, blackthorn, hawthorn, hornbeam and goat willow. It is contended that none of these should be protected due to lack of public visibility.
- Woodland Order W1 does not constitute 'woodland' and therefore should not be protected as such. It is not recorded as woodland by the Forestry Commission, National Forest Inventory, England and Magic. The National Forestry defines a woodland as having a minimum area of 0.5 hectares and a minimum width of 20m. Area has never been managed as a woodland and has been regularly mowed. They do not object to the trees being protected, but a woodland Order is not appropriate.

3.2 In summary, there is no objection to a TPO covering the northern and boundary trees, however, the internal trees should be removed from the TPO and the woodland category should be changed to a different category.

3.3 They are disappointed that there has been no discussion regarding the TPO.

4. RESPONSE TO OBJECTION

4.1 Legislation sets out that Local Planning Authorities can make a Tree Preservation Order: 'if it is expedient in the interest of amenity to make provision of trees or woodlands in their area, they may for that purpose make an Order with respect to such trees, groups of trees or woodlands as may be specified in the Order'. Officers are satisfied that in making the Order, full regard has been given to the legislative requirements set out in the Town and Country Planning Act 1990 and the published guidance within the Planning Practice Guidance and it is not accepted that there is any discrepancy or conflict with either.

4.2 In relation to more specific matters, officers would draw Members' attention to the following comments in respect of the objection received.

4.3 The objection primarily relates to lack of public visibility. Advice contained in Government Guidance, 'Tree Preservation Orders and trees in conservation areas' (6th March 2014), states that 'The trees, or at least part of them, should normally be visible from a public place, such a road or footway, or accessible by the public. Public visibility alone will not be sufficient to warrant an Order. The authority is advised to

also assess the particular importance of an individual tree, or groups of trees or woodlands by reference to its or their characteristics including:

- size and form
- future potential as an amenity
- contribution to, and relationship with the landscape ‘

- 4.4 It should be borne in mind that this land has been put forward as an allocated site, therefore all the trees have future potential as an amenity. In most cases, the objection appears to agree with the protection of the trees. Reference is made to the blackthorn being included; however, this is typical understorey and would normally be included as part of an Order. Similarly, removing some trees from some of the group Orders would not be appropriate as it is likely to impact on the other trees protected as part of the group. The correct way to address this would be to make an application to remove particular elements, or carry out particular work, with the usual justification requirements. The age of the trees is not relevant to the making of an Order.
- 4.5 In the case of the woodland, the guidance continues, ‘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 are after the Order is made are also protected by the Order.’ It also advises that ‘the purpose of the Order is to safeguard the woodland as a whole, which depends on regeneration or new planting’.
- 4.6 The Council’s Tree Officer noted, within the woodland, that there was understorey present and a number of young trees, including oak seedlings and saplings and some woodland understorey herbaceous plants.
- 4.7 Reference is made within the objection to the original TPO to the ‘main wooded area to the north’. Whilst the National Forestry Inventory has been mooted as a reason not to apply the woodland Order designation, it should be noted that this is simply a recording device and is not a fixed record. It is regularly updated. It advises that ‘We are also interested in smaller areas of woodlands. This includes smaller woods 0.1 – 0.5 hectares, trees in linear features, etc. Similarly, DEFRA’s Magic Maps is simply a recording device and is updated regularly. Not every area of woodland is recorded by the Forestry Commission. The Tree Officer considers, due to the features noted above, that the area is appropriate for a woodland designation. Whilst there are non-native trees present, the Tree Officer also advises that their removal and replacement to enhance the woodland would be supported.
- 4.8 Government advice clarifies that woodlands merit protection in their own right, regardless of the quality of individual specimens, and that regeneration of woodlands is an important part of the intention to make a Woodland Order.
- 4.9 With regard to the contention that the Tree Officer has not met with the agents or discussed the making of the Order, this would not be common practice, particularly in

view of the damage already done to the trees, and an Order would not usually be discussed with the owner, prior to making it.

5. ASSESSMENT

- 5.1 It is considered that a number of trees have significant public amenity value and value as a woodland in their own right, and that it was expedient to issue the Order in accordance with Government advice.
- 5.2 Notwithstanding the objection that has been received, officers are content that the woodland meets the relevant criteria for inclusion in the Order and that its protection is justified.
- 5.3 The presence of an Order on the woodland does not mean future, suitable management works will be restricted. As noted in the government guidance (NPPG):
- 5.4 The woodland category should not hinder beneficial woodland management. Whether or not they make an Order, authorities can consider encouraging landowners to bring their woodlands into proper management under the grant schemes run by the Forestry Commission. If a woodland subject to an Order is not brought into such a scheme, authorities can still encourage applications to manage the trees in ways that would benefit the woodland without making a serious impact on local amenity, for example by making a single application for regularly repeated operations.'
- 5.5 It is open to the landowner to make an application to the Council with regard to a future management regime for the woodland, that will be beneficial to its long-term health, while protecting its local amenity value.
- 5.6 With regard to the group and individual elements of the Order, officers are satisfied that these also meet the relevant criteria.

6. RECOMMENDATION

- 6.1 It is recommended that the Order is confirmed.