

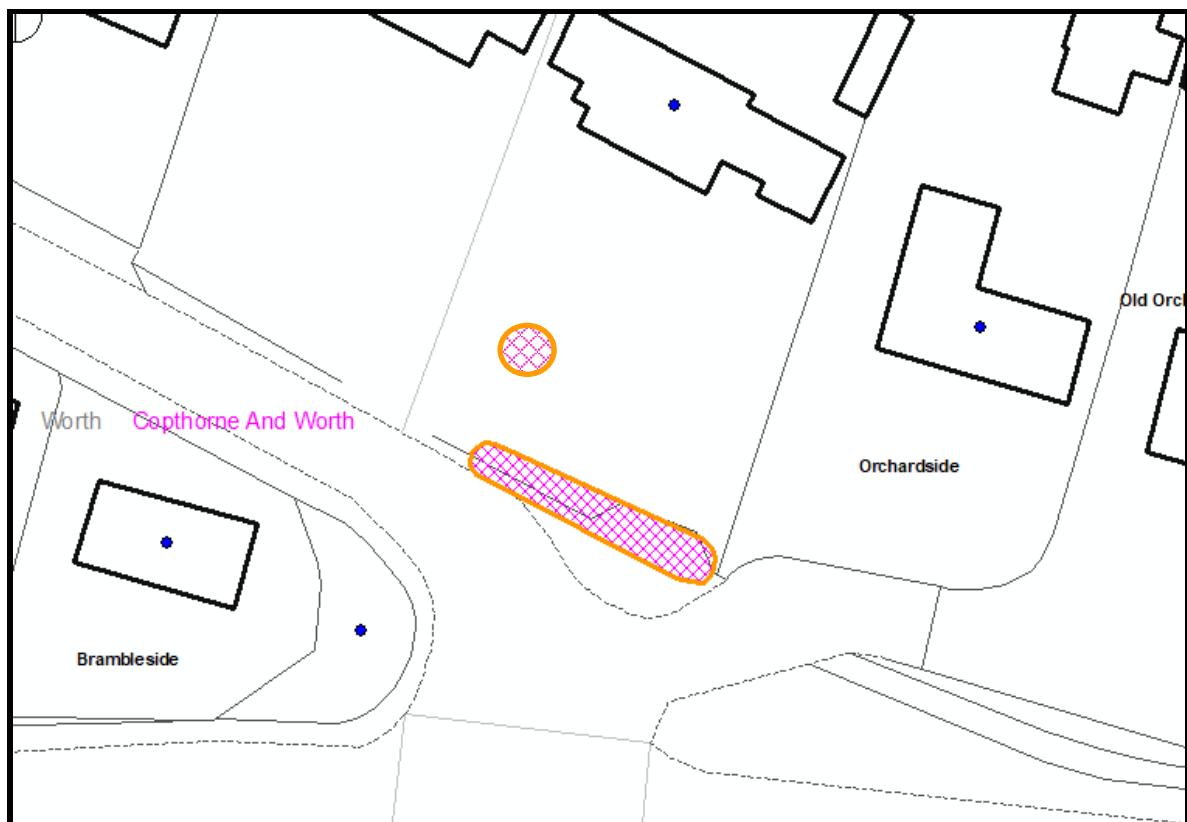
MID SUSSEX DISTRICT COUNCIL

Planning Committee

**10 DEC 2020**

OTHER MATTERS

**TP/20/0002**



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**Ayrton House, Borers Arms Road, Copthorne**

**REPORT**

Members are being requested to consider whether or not to confirm a new Tree Preservation Order (TPO), TP/20/0002 refers, for a group Order and an individual Order. The trees comprise a mixed group of oak, ash, sycamore, and understorey holly, while the individual tree is a semi mature Cedar. It is considered that the Order should be confirmed. This matter is before members as an objection by the owner of the trees has been received.

## **BACKGROUND**

The group of trees are located close to the perimeter of the property known as Ayrton House, Borers Arms Road, Copthorne. They are in an elevated position above the road and provide screening of the property and softening of views from the road and contribute to the semi-rural character of the area. The individual tree is semi mature and, although within the garden itself, has high public visibility, again due to its elevated position and also its height and form.

A TPO request was received some time ago, shortly after the current owner moved in. The site was visited by the tree officer, who also spoke to one of the owners of the property. It was noted that a large amount of trees and shrubbery had been removed from the land. However, reassurance was received from the owner that frontage trees would be retained.

The tree officer, at the time, did not consider that it was expedient to issue an Order and informed the owner and the person who had requested it, that the Council would not be issuing an Order at that time.

Since then, fencing has been erected within root protection areas and a number of relevant planning applications have been received as follows:

DM/18/3369 - Erection of a garage to the front of the property - Withdrawn

DM/20/1678 - Included a number of extensions to the property and a garage to the front. The garage element was removed following an objection by the tree officer and a request to set the garage further back from the trees.

DM/20/3265 – A current application for the erection of detached three car garage which is not yet determined. Amended plans are being considered following a request to set the garage further back from the trees to avoid future pressure on the trees.

Your Tree Officer also noted that some rather excessive pruning had been carried out to the oak tree on the frontage and considers that a TPO would allow greater control over any future work to the trees.

## **THE OBJECTION**

A number of objections to the order have been received from the owner of the trees and may be summarised as follows;

- The Order has dates that do not correspond and question the validity of the Order
- The quality, condition and expected longevity of the trees does not justify a TPO

- If the quality of the trees in terms of visual amenity is high, why have they not been individually preserved based on individual merit, rather than a group?
- The grouping is unjustified as all trees encompassed by the TPO are not of the same value or condition
- The dysfunctional understorey holly should not be included in the order. It has limited visual amenity and is insignificant in the group of subject trees. We have already tried to advise the council of plans for its removal and what plans we have to replace it. This was ignored
- It is not considered expedient of the LPA to make a TPO in respect of trees which are under good arboricultural management. Numerous attempts have been made to contact the council without any response having been received. It was perceived that the LPA had no arboricultural interest in the property.
- TPO appears to have been made without justified reason. With the exception of visual amenity, there is no further justification.
- The TPO map appears to be outdated (failing to show the dividing boundary). We question if the oak is actually protected as it appears to be outside the annotated black dashed line.
- It is not expedient for LPA to make the Order as the trees have not been cut down or pruned in ways which would have a significant impact on the amenity of the area.
- The TPO ignores the long term management considerations and poses an unacceptable obstacle to the implementation of regular maintenance
- The trees have always been considered for retention
- Given the severe lack of engagement by the council, it is our view that the TPO is not justified and that a solution through constructive dialogue should be found.

A number of other points have been made, however, these do not directly relate to the TPO.

The confirmation relates to two matters only, the expediency of making the Order and the visual amenity value of the trees.

On the point of the legality of the Order, the council's legal department has confirmed that the notice incorrectly states that the Order provisionally took effect on the 17<sup>th</sup> September, as opposed to 15<sup>th</sup> September, when it was actually served. They have confirmed that there is nothing wrong with the Order and the Order itself is clear when it came into effect. Further, the owner has not been prejudiced in any way, as he has replied with his representations soon after, and so did not miss any deadlines.

With regard to the objections, these are addressed, in order, as follows:

The tree officer considers that the quality, life expectancy etc of the trees is sufficient to justify the making of a TPO. It should be remembered that a number of adjacent trees were removed, and this will not have benefitted the group. The oak has been heavily pruned by the applicant.

The trees are considered to be appropriate for a group Order and one individual Order. Government guidance advises, para 024, that '*The Order must specify the trees or woodlands as being within 4 categories (individual, area, group and woodland)*'. There is nothing unusual in making an Order in this way. Your officer did not consider that the group of trees have high individual merit, thus they are protected for their group value, as they grow as a group and appear as a group from public views. Furthermore, the group category means that individual trees may not be removed as this is likely to damage others in the group. The cedar, protected as an individual specimen, grows as a single specimen, there are no other adjacent trees.

It should be noted that there is no requirement for trees protected as a group to be of the same age or condition. Often, groups will contain understorey trees and trees of different ages.

Understorey holly is frequently included within TPOs. It is one of the characteristic understorey plants within the district. Removal of the holly is likely to expose the trees further and disturb the roots. The trees, with the exception of the sycamore, are native trees and the holly contributes greatly to their biodiversity value. There is no reason to replace the holly, as it is the natural understorey plant. It is accepted that holly often becomes drawn and, it is likely that, should an application be made in the normal way to reduce the holly, then this would be supported by the tree officer. This may encourage stronger, more bushy growth.

It is considered, for the reasons stated above that clear expediency exists to protect the trees. It is accepted that there was some overgrowth close to the highway which has been removed, however, the oak tree has been inappropriately reduced and now mostly exhibits top growth only at the ends of the branches.

As set out in the National Planning Policy Guidance '*an Order is made by a Local Planning Authority to protect specific trees, groups of trees or woodlands in the interest of amenity*'. As such the only justifiable grounds for an Order is on amenity grounds, and that forms the basis of the Order in this instance.

Your Tree Officer has been concerned about aspects of the arboricultural management of the trees, e.g. the pruning of the Oak and removal of the holly

understorey and replacement with mixed garden shrubs, which lead to the issuing of the Order in the first instance.

The TPO map is considered accurate and is not intended to accurately show boundaries. It is intended to show which trees are protected. With regard to the oak, it is considered that this is clearly shown as included in the group Order. There could be no confusion, as no other oaks are adjacent. Furthermore, government guidance referred to above, states, para 025 that '*The legislation does not require authorities to ..plot them ( trees ) on the map with pinpoint accuracy*'

Your officers accept that the trees may require long term management, particularly if there is an adjacent garage, however, the TPO is no obstacle to future works, as long as the works are considered appropriate and reasonable.

There is no dispute that the applicant may wish to retain the trees. They provide screening to his land and property, as well as visual amenity and biodiversity. The Order enables the Council to control future works to the trees for the benefit of public amenity and, it should be remembered at a TPO covers the land, not the landowner, and therefore these trees will be retained in the longer term, should land ownership change. There is no fee to make an application and reasonable works to trees are always approved.

With regard to the final point, whilst not strictly relevant to the making of the Order, a number of officers have separately engaged with the owner following various complaints and allegations, including the Tree Officer. It would not be normal practice to advise the owner that they were making an Order on his trees.

Furthermore, it should be noted that the Tree Officer did not issue the Order when it was first requested, due to lack of expediency. Careful consideration is always given to the making of an Order and in this case, it was made after an escalation of factors which were considered harmful or potentially harmful to the trees.

## **ASSESSMENT**

It is considered that the tree forms part of a line/group of important frontage trees along Borers Arms Road, consistent with the character of the area and providing screening and biodiversity.

A TEMPO assessment was carried out on the trees with a score of the group of 18, and the individual cedar scoring 23, definitely meriting the making of a TPO.

The trees are of high public visibility value and contribute to the semi-rural quality of the street scene.

With regard to the report, different arboricultural perspectives are common in this field and it is not accepted that the trees are of insufficient quality to merit a TPO.

Officers are content that the trees merit the making of a TPO.

## **RECOMMENDATION**

It is recommended that the Order is confirmed