

EAST HERTS COUNCIL

DEVELOPMENT MANAGEMENT COMMITTEE – 12 NOVEMBER 2014

REPORT BY HEAD OF ENVIRONMENTAL SERVICES

COLTSFOOT MEAD WOOD – PROVISIONAL TPO 587

WARD(S) AFFECTED: DATCHWORTH AND ASTON

Purpose/Summary of Report:

- To support confirmation of Tree Preservation Order 587, Coltsfoot Mead Wood, Bulls Green, Datchworth, Herts.

RECOMMENDATIONS FOR DEVELOPMENT MANAGEMENT COMMITTEE: That:

(A)	Tree preservation Order (No 13) 2014 P/TPO 587 be confirmed as an opposed order; and
(B)	The Director of Neighbourhood Services be authorised to bring it into operation.

1.0 Background

1.1 A Tree Preservation Order was served in respect of Coltsfoot Mead Wood, under section 201 of the Town and Country Planning (Trees) Act 1990, on 27 May 2014. This order had the immediate effect of protecting the woodland for a period of six months, but is required to be submitted to the Committee as an opposed order for confirmation and permanent effect.

2.0 Report

2.1 Members may recall that planning permission was refused in November 2013 (Ref: 3/13/2079/FP) for an access track from Coltsfoot Lane to the area of woodland known as Coltsfoot Mead Woods. This was refused largely on the impact the track would have on protected trees along its length. However, an appeal against that refusal, dated 20 May 2014, (Appeal Ref: APP / 31915 / A / 14 / 22114011) was allowed and retrospective planning permission granted for the woodland track.

2.2 Following the appeal decision, a provisional Tree Preservation Order (TPO) was made for Coltsfoot Mead Wood and, in order to

satisfy regulation 3 of the 1999 TPO Regulations, a letter was delivered to the land owner on 27 May 2014 giving the reasons for making the TPO, which were:

“The woodland and trees are visible from the public Right of Way – Footpath Datchworth 022 which runs along the woodland northern boundary of the site.”

and:

... “This is woodland containing moderate and large trees of reasonable form and condition for the species types and age/maturity. These trees contribute both individually and collectively towards the woodland character of the Bull’s Green settlement, are suitable for their particular setting and sit well with the presence of other trees and woodlands in the vicinity. The woodland is not under good silvicultural management and the LPA believe there is a risk of these trees being cut down or pruned in ways which would have a significant impact on the amenity of the area and/or that certain trees are at risk generally from potential development pressures following the (proposed completion of) construction of vehicular access direct from Coltsfoot Lane to Coltsfoot Mead Wood.”

The amenity value of the trees was assessed and attention paid to the desirability of preserving the character and appearance of the area.

3.0 Implications/Consultations

- 3.1 Objections and representations have been made to the Order, and the Local Planning Authority (LPA) cannot confirm the TPO unless they have first considered them. This report has been prepared for the Committee therefore for a determination as to whether to confirm the TPO and in order to demonstrate that the decision, at the confirmation stage, is taken in an even-handed and open manner. This report includes details of all objections and representations and the Landscape Officer’s observations on these in the light of site visits and discussions with people affected by the TPO. A copy of the report has been sent to those people who have made objections and representations, with an invitation to submit any further views before the Committee meet to make their decision.
- 3.2 The Council’s Landscape Officer has considered each objection in turn and can advise as follows:

3.3 Objections were received from the woodland owner on the following grounds:

1) On the grounds that the TPO will give the Council overall control of the management of the woods and the ability to reject any woodland management proposals:

Officers response:

The LPA acts in accordance with the government publication 'Tree Preservation Orders: A Guide to the Law and Good Practice': This Guide sets out the Government's policy advice on the tree preservation order system. It outlines the law as it currently stands in England, taking into account the Town and Country Planning (Trees) Regulations 1999 which came into force on 2 August 1999. It also suggests ways in which local planning authorities can run the system in line with good administrative practice and in regard to woodland these guidelines state that:

A woodland TPO should not be used as a means of hindering beneficial management work, which may include regular felling and thinning. LPAs are advised, whether or not they make a TPO, to encourage landowners to bring their woodlands into proper management under the grant schemes run by the Forestry Commission. If, for one reason or another, woodland subject to a TPO is not brought into such a scheme, applications to manage the trees in ways that would benefit the woodland without making a serious impact on local amenity should be encouraged.

In addition, each TPO sets out when an appeal to the Secretary of State can be made following an application for consent to cut down or carry out work on a protected tree or woodland, and an appeal may be brought against any of the following:

- the LPA's refusal of consent;
- any condition attached to the LPA's consent;
- any replanting direction on granting consent to fell any part of a woodland; or
- the LPA's failure to notify the applicant of their decision within two months or 8 weeks from the date they received the application (or such extended period as may be agreed by the applicant and LPA in writing).
- the LPA's refusal to agree a matter that required their agreement under the terms of a condition of consent. For example, say the LPA grant consent to the cutting down of a

tree subject to a condition that a replacement tree is planted of a size and species, and in a location to be agreed with the LPA. If the LPA and applicant subsequently fail to agree any of these matters the applicant may appeal to the Secretary of State.

In dealing with an application in woodlands, the LPA must therefore grant consent so far as accords with good forestry practice unless they are satisfied this would fail to secure the maintenance of the special character of the woodland or the woodland character of the area. The purpose of a TPO is to protect against loss of woodland which contributes to the amenity of the local area.

2) On the grounds that there are no valid reasons to make the TPO.

The purpose of the woodland TPO is to protect against the loss of woodland as an amenity to the local area. The reasons for making the TPO were given when the provisional TPO was served, and it is considered expedient, under the legislation, to make or confirm a TPO where the LPA believe there is a risk of woodland or trees being cut down or managed in ways which would have a significant impact on the amenity of the area. It is not necessary for the risk to be immediate and it is sufficient for the LPA to believe that the woodland may be at future risk generally from development pressures. Changes in property ownership and intentions to fell trees are not always known in advance, and so the protection of trees or woodland by a precautionary TPO is in accordance with good practice guidelines.

3) On the grounds that a TPO will not allow the activities that they want to carry out such as the coppicing or thinning of trees, the planting of trees, grazing of livestock or creation of a woodland track to allow for management of the woodland.

The TPO may restrict some development activities in that one of the effects of the TPO is that the LPA's consent is required before cutting down or carrying out work on trees to implement permitted development rights. So anyone relying on permitted development rights to build a permanent structure such as a lodge or wood cutting shed for example would have to obtain the LPA's consent if it was necessary in the process to cut down or carry out work on a protected tree.

The TPO will also come into effect if it becomes necessary in order to stop or prevent the carrying out or continuing of operations that will prevent the natural regeneration of the woodland and this could include the excessive grazing, preventing new saplings or young shoots from coming through, such that the woodland would be prevented from regeneration over time. This is because the purpose of the TPO is to safeguard the woodland unit as a whole, which depends on regeneration or new planting. The TPO does not prevent the coppicing or thinning of trees in line with good management or conservation practice, or the planting of trees, grazing of livestock per se or creation of a woodland track to allow for management of the woodland.

Only activities harmful to the future of the woodland therefore will be prevented under the TPO, although the LPA's consent is not required for cutting down or carrying out work on trees if required to implement a full planning permission. For example, the TPO is overridden if a tree has to be removed to make way for a new building for which full planning permission has been granted.

4) On the grounds that other Hertfordshire environmental organisations have not been consulted when making the TPO.

The requirements to consult are set out in Tree Preservation Orders – A Guide to the Law and Good Practice and Local Planning Authorities do not consult outside organisations or other groups when making or confirming TPOs except for the statutory consultation with the Forestry Commission, before making a TPO on land in which the Commission have an “interest” i.e. if there is an existing forestry dedication covenant in force or if they have made a grant or loan under section 1 of the Forestry Act 1979. The LPA has liaised with the regional conservancy of the Forestry Commission at the provisional TPO stage to ensure that the Commission do not have an interest in the land.

5) On the grounds that the requirement for felling licences from the Forestry Commission is sufficient to protect the woodland.

The LPA's consent is not required for cutting down trees in line with a plan of operations agreed by the Forestry Commission under one of their grant schemes, or for the cutting down of trees in accordance with a felling license. However a felling license is only required when it is proposed to cut down or remove more

than five cubic metres of timber within any three month period. It is therefore possible to clear unprotected woodland of individual trees, without consultation from the Forestry Commission. The felling license system therefore excludes works on a small scale, which are controlled more appropriately by TPOs

The main cases where a felling licence *is not* required, but where consent under a TPO is required, are for:

- (a) the topping or lopping of individual trees within the woodland.
- (b) the felling of trees with a diameter of 8 centimetres or less (measured at 1.3 metres from the ground), or 15 centimetres in the case of coppice or underwood,
- (c) the thinning of trees with a diameter of 10 centimetres or less.

The Forestry Commission will normally decide all felling licence applications involving trees protected by TPOs, only after consulting the relevant LPA. Then, if the Forestry Commission proposes to grant a felling licence and the LPA disagree; the LPA may make a formal objection to the Commission. If the LPA makes such an objection the application will then be referred to the Secretary of State for the Environment, Transport and the Regions, who will decide the application under the TPO.

7) On the grounds that a TPO could have been served on individual trees.

The purpose of woodland TPOs is to safeguard woodland units as a whole. A woodland TPO is aimed at protecting the woodland as well as aiming to ensure its regeneration over time.

8) On the grounds that the TPO would be costly in terms of time and money.

Applications to carry out works on trees or woodland covered by TPOs are free. The application forms are in national standard format and comprise two pages approximately one of which is for applicants/agents addresses, trees location, applicant/agents contact details and trees or woodland ownership details.

Only one application is needed to carry out a number of different operations on the same tree (for example, to reduce some branches and lift the crown) or to carry out work on a number of trees (for example, to reduce the crowns of a line of trees).

Similarly, a programme of work (such as specific operations which are to be repeated on an annual or regular basis or a series of operations phased over a period of time) could be submitted as one application. Such applications are in fact encouraged as a means of promoting ongoing beneficial woodland management plans of, say, five years without the need for repeated applications over a relatively short period of time.

9) On the grounds that a TPO will impede them in managing biodiversity.

The effect of the order is to protect the woodland specified but does not impede good woodland management. Improving biodiversity via good woodland management practice is encouraged and will naturally be focused on the ecosystems appropriate to a woodland environment

10) The woodland owner objects to the description of the woodland.

The description in the notice of a TPO is not required to be a detailed arboricultural survey.

11) The woodland owner objects on the grounds that there is a lack of natural regeneration due to excessive grazing of young and new shoots by rabbits and deer.

The TPO may be used to ensure that where felling and coppicing is carried out, suitable measures are put in place to ensure the establishment of any restocking required.

12) On the grounds that a TPO will not in itself ensure good woodland practice and is a tool of prohibition.

The TPO can only help to prevent adverse woodland practice and cannot be used to prevent good woodland management, which may include the selective felling, coppicing and pruning of trees etc.

13) On the grounds that poor silvicultural management of the wood in the past has been primarily as a result of lack of access.

The TPO does not in itself restrict reasonable access for woodland management.

14) On the grounds that Individual trees at potential risk have not been specified.

It is the purpose of the TPO to protect the integrity of the woodland unit as a whole.

15) On the grounds that the woodland is protected by Green Belt policy and that the TPO should not be used to protect against a non-existing development threat.

There are records of nearby breaches in respect of planning / TPO regulations.

Green Belt policy does not prevent:

- (1) cutting down,
- (2) uprooting,
- (3) topping,
- (4) lopping,
- (5) wilful damage, or
- (6) wilful destruction

of trees or woodlands, the TPO regulations are intended to bridge this gap.

4.0 Other Representations

4.1 There are two letters of local support for confirmation of the Coltsfoot Mead Wood TPO.

4.2 There are recorded complaints from neighbouring landowners about tree felling operations on or adjacent to Coltsfoot Mead Wood.

Background Papers

None.

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