

Application Number: PS/540/15/423

Description Confirmation of Tree Preservation Order PS/540/15/423

At Land Between Lower End Road, Wavendon and Tavistock Close, Woburn Sands and along Cranfield Road, Woburn Sands, Milton Keynes

For Milton Keynes Council

Statutory Target: 6 January 2021

Extension of Time: No

Ward: Danesborough and Walton

Parish(s): Wavendon/Woburn Sands

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1.0 RECOMMENDATION

1.1 It is recommended that the Tree Preservation Order (TPO) is confirmed, subject to modifications set out in this report.

2.0 INTRODUCTION

The Site

2.1 The application site is large triangular shaped parcel of land situated within the locality of Wavendon and Woburn Sands. The area proposed within this TPO is to the south of Lower End Road, east of Newport Road, and west of Cranfield Road.

2.2 The site encompasses Cross End and the Wavendon Golf Course site. Within the site lies a number of residential and commercial properties.

The Proposal

2.3 It is proposed by officers that the temporary TPO PS/540/15/423 is confirmed subject to modifications as permanent. The detailed schedule of the trees to be confirmed

are as laid out within Appendix 1 of this report. The TPO was served to protect the character and amenity of the area.

Reason for referral to committee

- 2.4 The application has been referred to Development Control Panel because during the consultation period associated with the new temporary TPO, a number of objections were received relating to service of the TPO.

Scope of debate/decision

- 2.5 The scope of the debate for members to consider is whether to confirm the TPO subject to modifications as permanent, taking into account the health of the trees and their amenity value, and the representations received.

3.0 RELEVANT POLICIES

National Legislation

- 3.1 Town and Country Planning Act 1990
3.2 Town and Country Planning (Tree Preservation) (England) Regulations 2012

Guidance

- 3.3 National Planning Practice Guidance

Tree Preservation Orders and trees in conservation areas
Paragraph 001 (Reference ID: 36-001-20140306) – Paragraph 171 (Reference ID: 36-171-20140306)

- 3.4 Human Rights Act 1998

There may be implications under Article 8 and Article 1 of the First Protocol regarding the right of respect for a person's private and family life and home, and to the peaceful enjoyment of possessions. However, these potential issues are in this case amply covered by consideration of the environmental impact of the application under the policies of the development plan and other relevant policy guidance.

- 3.5 Equality Act 2010

Due regard, where relevant, has been had to the Milton Keynes Council's equality duty as contained within the Equality Act 2010.

4.0 RELEVANT PLANNING HISTORY

- 4.1 Application Site

PS/540/15/42 - Proposed 8th January 2020 (Superseded by this current TPO)

PS/540/15/168 - Confirmed 9th November 1994

PS/540/15/110 - Confirmed 8th February 1989

PS/540/15/99 - Confirmed 27th May 1987

PS/540/15/47 - (Group/Area TPO) - Confirmed 22nd November 1983

PS/540/15/97 - (Group/Area TPO) - Confirmed 16th October 1986

5.0 CONSULTATIONS AND REPRESENTATIONS

5.1 MKC Arboricultural Officer

In this instance the Arboricultural Officer has undertaken the works in implementing the Tree Preservation Order. Within the representations received however comments have been made in relation to the Arboricultural Officer and the assessment made on trees around 'The Spinney' (W14 and G17). As such another Arboricultural Officer has made the assessment on these subject trees, these comments are provided as follows;

"I have been asked by Stephen Narborough (Milton Keynes Council Landscape Technical Officer), to review and make comments on the above proposed orders in response to objections the council has received.

Objection raised by occupants of The Spinney (W14 and G17)

During my investigation, I visited the site and viewed the trees that are included in the respective Orders cited above. For the purpose of my investigation I stayed within the realms of the publicly owned land and did not venture into the private garden of Spinney Lodge.

In addition to this, I can state that I have had no contact, either in person, via email or orally with the complainants, and as such the decisions and conclusions I have arrived at have not been influenced by either party.

After carefully considering the lengthy arguments put forward by all the [site occupiers], and subsequently studying their submitted photographs, I am in agreement that the section of tree cover that is currently in the garden of Spinney Lodge does not have a closed canopy that would lend itself to be called a woodland, and as such I do not feel that a woodland order is merited for this small section in the western end of W14.

I must however consider if the trees that are located within the grounds of Spinney Lodge, warrant inclusion in the TPO as part of a Group Order, and not as a Woodland Order.

After carefully considering this option, I believe the trees are not under a known threat of removal or imminent destruction, and their location and condition do not lend themselves for inclusion in the proposed amended TPO.

Moving to G17, which consists of three Ash trees located close to Cranfield Road and are highly visible specimens for anyone driving/walking along Cranfield Road to see.

Following a review of these trees, I believe two of the three trees are in a condition that would negate them from being included in the Group Order. It is likely that they will require removal within a short period of time due to their location and their lean towards Cranfield Road.

In summary my review concludes that:

1. W14 should not extend into the garden of Spinney Lodge, and
2. G17 should be amended to a single Ash tree and denoted as such in the amended order.

I trust this review and my comments will be considered when amending the current temporary TPO”.

5.2 Neighbour/ Third Party Representations

A total of ten objections, from eight addresses, have been received in relation to the proposed TPO, a summary of the objections is provided as follows;

- Council has not assessed the arboricultural value of the trees.
- TPO will impede the ability to successfully maintain the trees.
- The significant number of trees included within the area TPO is onerous.
- Land owners have due regard for the existing trees and would design development around existing trees.
- A number of the trees are not of significant arboricultural value.
- Council has not undertaken the correct process as the rationale for the actions are unclear.
- Land Owner was not notified.

6.0 **MAIN ISSUES**

Whether or not the TPO should be confirmed as permanent
The functioning of tree preservation orders
Confirmation of this Tree Preservation Order
List of amendments
Response to objections

7.0 **CONSIDERATIONS**

Whether or not the TPO should be confirmed as permanent

- 7.1 The site has been subject to two temporary TPO's, the first of which (PS/540/15/42) was served on 8th January, this order has not been confirmed as the order was superseded by the current order, which is also temporary and expires on 6th January 2020. Should the TPO not be confirmed by this date (the six-month period), the

Council would have to undertake a further temporary TPO. Due to the extent of the area in which this order covers and the number of landowners, serving such order are an extensive administrative task to both make and confirm the order.

- 7.2 A TPO can be made only where it appears to an LPA that it is expedient in the interests of amenity to make provision for the preservation of trees or woodlands in their area. In deciding whether or not to confirm the TPO, the Council must consider the duly received representations. The Council received eight representations, which are summarised in Para. 5.2 and set out in further detail from Paragraph 7.14 of this report.
- 7.3 In serving this TPO the Council has consideration to ongoing general development pressures on land marginal to major settlements such as the locations in this case which have been the subject of several major development proposals. The Council considers that the pressure is sufficient to warrant proactive protection of trees so that they remain to be considered in the planning process, as well as looking to the future when changes in property ownership and usage may occur.
- 7.4 Such changes may both threaten trees through direct development pressures and changes in land use, but they may also serve to bring the trees into increased public visibility and access. Thus, proactively serving a tree preservation order as a precautionary measure is prudent in the interests of the visual amenity and all the other benefits in terms of eco-systems services that trees and woodlands provide, and will also be in accordance with the Council's local plan policies, green city aspirations and biodiversity initiatives.

The functioning of tree preservation orders

- 7.5 Tree Preservation Orders confer legal protection on the trees in question making it a criminal offence to cut, damage or destroy the trees so protected without written consent of the Council. Fines for so doing can be up to £20,000. In serious cases a person may be committed for trial in the Crown Court and, if convicted, is liable to an unlimited fine. The protection extends to all parts of the trees including their roots. There are however various exemptions to the protection including for the removal of dead and dangerous trees or parts of trees such as dead wood or broken branches.
- 7.6 Tree Preservation Orders allow the Council to retain the ability to take decisions in respect of trees and woodlands in their planning for the city's growth. As development planning permissions supersede tree preservation orders, protected trees may be pruned or removed where that is necessary to execute a current planning permission, and written consent may also be sought from the Council under a Tree Protection Order to carry out appropriate tree surgery works.
- 7.7 Applications for consent to work on protected trees have an eight-week determination period, they are not currently subject to a fee.
- 7.8 The Council is able to offer pre-application advice for Tree Preservation Order consent applications and would not unduly refuse consent for arboriculturally appropriate works. Regularly repeated works may be granted a single consent to cover several years in order to avoid the need for frequent applications.

Confirmation of this Tree Preservation Order

- 7.9 It is proposed to confirm this order with modifications following a review of the trees initially included. The modifications primarily include the exclusion of various tree group on the basis that their main value lies in their group effect rather than in individual merit and the group effect is of most value where it is a position to provide a screening function in development planning, i.e. at site margins, therefore a considerable amount of such groups within sites, which would likely be considerably reduced in any development planning, have been excluded. A number of other minor amendments have been made to expedite the order.

List of modifications

- 7.10 Removed from the order; T47 and T61. G1, G2, G4, G5, G6, G7, G8, G10, G13 and G17. W2, W3, W5, W6, W7, W8, W10, W11, W12 and W13.
- 7.11 Changed; W3 reduced and renumbered new T1A and new G4, W5 reduced and part becomes new G5, W9 slightly increased in extent, W13 removed and one tree renumbered T38A, G14 reduced to create new individual T36A, G17 reduced to one tree new individual T52A, W14 slightly reduced in extent.
- 7.12 Re-used numbers; G4 for part of former W3, G5 for trees previously covered by the larger W5, T47 for an Ash tree added to the order.
- 7.13 New numbers; T1A, T36A, T38A and T52A

Response to objections:

- 7.14 Several objections refer to the quality of the plans that form an important part of the order. The problem arises from a loss of definition due to the plans undergoing several generations of lower definition scanning which coupled with the subtle delineations of the available GIS system results in loss of information which can endanger the ability of the order to stand in a legal sense. In order to resolve this, good copies of the originals will be sent initially in the internal post rather than as digitally scanned versions. They should then be used at their intended A3 size with amended titles allowing room for the legal legend and seal without having to encroach on the plan itself. Going forward, access to better scanning and GIS mapping will be pursued.

Deeth Farm

- 7.15 The trees at Deeth farmhouse, in making a positive contribution to the appearance of the local area and countryside, are important for their size, form and historic value in relation to the listed building and the visual amenity of the locality. They are also of considerable value for their mitigation of climate change effects and support for biodiversity.
- 7.16 It is acknowledged that the trees at Deeth Farm have fared well and been under good arboricultural management for some considerable time. However, the council has to

consider the current development pressures on land at the margins of settlements such as this, as well as looking to the future when changes in property ownership and usage may occur. This may both threaten trees through direct development pressures and changes in land use, but it may also serve to bring the trees into increased public visibility and access, thus proactively serving a tree preservation order as a precautionary measure is prudent.

- 7.17 The Council as part of the assessment undertaken does not infer that works previously undertaken to these trees have had a negative impact on the locality, quite the opposite, the Council is grateful that the trees have been cared for and is seeking to support their continued positive contribution going forward in the medium to long term.
- 7.18 As previously indicated, any consent obtained from the LPA to maintain or undertake works to the trees are not subject to a fee, and for general maintenance works are unlikely to be refused where there is arboricultural merit in the works proposed.

The Oak T51

- 7.19 This is an old and prominent tree and it is most unfortunate that it has been attacked by the decay fungus *Armillaria*. The assessment that it has a 'short safe useful life expectancy at least at current stature' is noted and the Council supports the proposal in the report for the crown reduction, which should ideally be the subject of an application for works in the short term.
- 7.20 Dependant on the progress of the pathogen, the tree may safely live at a smaller stature for years or even decades. As a small pollard with limited live material it could serve as a 'habitat-hulk' for the benefit of a wide range of wildlife and even once dead, the trunk could safely be retained at height of three metres or so to provide habitat for important species while a replacement tree can be planted nearby.

The Lime T49

- 7.21 This tree is of a mature age and size but not in such a prominent position as T51 and is close to a brick-built agricultural/industrial building. Consideration has been taken of the likelihood of the agricultural/industrial buildings being converted to, or cleared for, residential development which would thus increase both the public prominence of this tree and the threat to it during that process. While regular maintenance of this tree may be required to minimise conflict with the building, in order to reduce the frequency of consent applications for that work, a 'term consent' may be applied for to cover a number of years and pruning operations.
- 7.22 Although there are potential problems with these two trees, particularly the Oak, these do not preclude the benefits the trees can provide in the short to medium and even the long term. For this reason and those outlined above it is considered expedient to recommend them for inclusion and confirmation under Tree Preservation Order.

Spinney Lodge

- 7.23 It is considered that the section of tree cover that is currently in the garden of Spinney Lodge does not have a closed canopy that would lend itself to be called a woodland, and as such the council's Arboricultural Officer considers that a woodland order is not merited for this small section in the western end of W14.
- 7.24 Whilst it was considered that if the trees are not under a known threat of removal or imminent destruction, and their location and condition do not lend themselves for inclusion in the proposed amended TPO. As such it has been recommended that W14 should not extend into the garden of Spinney Lodge, and G17 should be amended to a single Ash tree and denoted as such in the amended order.

The Lodge, Crabtree Lane.

T61

- 7.25 It is contended that the tree T61 is too close to the dwelling house and has future potential for growth which could see it come into conflict with the dwelling, in particular the foundations. No evidence of vegetation related foundation damage has been presented. This tree is a fastigate Hornbeam and is quite young yet. This cultivar has a narrow crown when young but it will broaden considerably with age and due to the proximity to the dwelling is very likely to come into conflict with it; for this reason it is considered prudent to exclude this tree from the order.

T59 and T60

- 7.26 It is suggested that in the future one of these trees may have to be removed to favour the other and that pruning works are planned for them in the near future. These two trees are on the property boundary and make a significant contribution to the street scene. The proposed works can be dealt with via an application for consent to undertake works to a protected tree and likewise the removal of one the trees in the future when one has begun to dominate and suppress the other. For these reasons these two trees are recommended for inclusion under the order.

Wavendon Properties

- 7.27 Imminence of development; Since the appeals against refusal of planning permission to develop the land were dismissed, the imminence of development of the land in question has abated for the time being. However, the council has to consider the ongoing general development pressures on land marginal to major settlements such as this. It is considered that the pressure is sufficient to warrant proactive protection of trees so that they remain to be considered in the planning process, as well as looking to the future when changes in property ownership and usage may occur. This may both threaten trees through direct development pressures and changes in land use, but it may also serve to bring the trees into increased public visibility and access, thus proactively serving a tree preservation order as a precautionary measure is prudent in the interests of the amenity and eco-systems services that trees and woodlands provide, and will also be in accordance with the councils local plan policies, green city aspirations and biodiversity initiatives.

- 7.28 With the trees protected, the Council retains the ability to take decisions in respect of trees and woodlands in their planning for the cities growth. As planning permission in any case supersedes Tree Preservation Orders, protected trees may be pruned or removed where that is necessary in order to execute a current planning permission, while consent may also be sought under the Tree Protection Order to carry out suitable tree surgery works.

W9

- 7.29 While this is not the best quality of woodland and notwithstanding that it requires management, is constrained by power lines and would benefit from thinning and re-stocking, it does nonetheless provide the basis for a woodland of more significant quality and impact rather than having to start from scratch with new planting.
- 7.30 The land occupied by this woodland is likely to be utilised in any future development for an access road. The existing levels may present a problem in this respect as the levels required for road construction could conflict with the retention of a certain portion of the trees, but through the initial protection of all the trees a path for the access road can be agreed in the planning process, protecting as many of the better trees as possible and allow for appropriate replanting either side of the access road to create a good quality leafy access to the development and help to meet the council's local plan policies, green city aspirations and biodiversity initiative goals.

W14

- 7.31 This woodland TPO will ensure that the woodland strip can remain to be considered as part of any planning application which, if the planning process results in it being retained, it will not only continue to provide a green and leafy character along Cranfield Road but will also serve to act as screening for new developments and to provide visual amenity for such developments along with beneficial management and augmentative planting. This woodland was originally part of the historic parkland of Wavendon House and is individually marked on the OS 25 inch map of 1892 – 1914 series, and was then more extensive.
- 7.32 Viewed from Cranfield Road the woodland strip W14 appears as a single coherent visual mass from Spinney Lodge in the southwest to the field entrance by Park Farm Business Park to the northeast. While the Elm trees in this woodland strip could be excluded, they do have wildlife value both as living specimens and standing dead wood. Their propensity to be attacked by Dutch elm disease while they are still small can be easily managed as once they are in decline they are broadly exempt from the provisions of the order anyway, although care should still be taken in the management of the woodland to avoid development of any hazard to the adjacent road.

T41

- 7.33 Like the woodland W14, the Lime tree T41 was originally part of the historic parkland of Wavendon House and is individually marked on the OS 6 inch map of 1888 – 1913 series (Appendix 3). While it is not an especially tall tree as veteran Limes can

become, it is still of considerable girth and worthy of retention due to its visual amenity, age, historical associations and eco-systems services. The ecological communities associated with old trees such as this are very difficult if not impossible to replicate and therefore deserve to be protected and appreciated in accordance with the councils local plan policies, green city aspirations and biodiversity initiatives.

Aspect Arboriculture's representation:

Reason 1

- 7.34 Currently there does not appear to be an imminent risk to the trees and the recent proposals for development of the golf course site made provision to retain a high proportion of the trees which was well received. However, the council has considered the ongoing general development pressures on land marginal to major settlements such as this. In considering this, the council is of the view that the pressure is sufficient to warrant proactive protection of trees so that they remain to be considered in the planning process, as well as looking to the future when changes in property ownership and usage may occur.

Reason 2

- 7.35 Work required for good arboricultural reasons would generally be allowed under consent applications for works on the protected trees and term permissions may be granted allowing for works to be carried out over several years to avoid the need for frequent applications. The TPO would also serve to keep the young groups to be considered in future planning process and in doing so would establish their importance as established green infrastructure allowing for beneficial management and augmentation as appropriate capitalising on the existing root and canopy systems and associated ecological communities, instead of starting from scratch with new planting. However it is appreciated that the young fairway plantings have their value as groups rather than as individuals and they do cover a considerable part of the site, so that in order to develop effectively certain amounts of them will have to be removed, consequently the TPO will be amended to exclude most of the internal fairway planting.

Reason 3

- 7.37 Prior to confirmation the TPO is of a broad catch-all nature and then in the time since serving, it has been reviewed with the purpose of identifying the trees that are of importance for various reasons and those which on balance should be excluded. As part this review a site meeting was held with Aspect Arboriculture. While it is a priority to protect the trees of important stature, age and historical associations, the Council also looks to those trees of less importance that can become the important trees of the future as well as certain of the younger trees such as marginal fairway plantings that will serve for screening purposes as part of the planning for the site for development, without posing a significant constraint to development of the site.

8.0 CONCLUSIONS

- 8.1 In conclusion, it is considered that the TPO should be confirmed, subject to modifications, as permanent to ensure that the quality trees are retained and given protection against any forthcoming development given the arboricultural value of the trees within the wider site.

9.0 CONDITIONS

- 9.1 In this instance conditions are not applicable, as this report considers Tree Protection Order under Section 198 of the Town and Country Planning Act 1990.

A1.0 APPENDICES

Appendix 2 - OS 6-inch map of 1888 – 1913 series

