

Confirmation of Re-Served Tree Preservation Orders

Report by Historic Environment Manager

Summary: Members will be aware that the review of trees worthy of preservation and the protection of such trees by means of a Tree Preservation Order (TPO) is an ongoing process and TPOs are authorised by the Planning Committee. The Authority has recently reviewed its existing TPOs to assess their compliance with current legislation. As a result a total of 37 TPOs were re-drafted and re-issued for consultation. This fell within Officers' delegated powers.

The purpose of this report is to provide Members with the feedback from the consultation and to make a recommendation on the confirmation of the new TPOs and revocation of the existing ones.

Recommendations:

- (i) That Members confirm 34 new Tree Preservation Orders that have been issued (listed in Appendix 1) and revoke the corresponding existing orders.
- (ii) That Members undertake a site visit in the case of BA/2016/0036/TPO in line with the adopted procedure as an objection has been received.
- (iii) That Members agree not to confirm two Tree Preservation Orders.

1 Introduction

- 1.1 As part of its obligation as a Local Planning Authority (LPA) the Broads Authority is required to serve Tree Preservation Orders (TPOs) on trees which are considered to be of amenity value and are at threat. There are criteria set out in "The Town and Country (Tree Preservation) (England) Regulations 2012" against which a tree must be assessed against before it can be considered for preservation.
- 1.2 Under the legislation all TPOs require confirmation by the LPA before they finally come into force.
- 1.3 The Broads Authority's scheme of delegation requires that all new and any amendments to existing TPOs will be determined and confirmed by the Planning Committee.

2 TPO Procedure

- 2.1 As previously stated the Broads Authority is obliged to protect trees worthy of preservation by means of TPOs. There are national criteria set out against which a tree should be assessed in order to determine whether it is worthy of preservation.
- 2.2 When trees are considered potentially worthy of protection, they will be assessed against the prescribed criteria and if the tree meets these criteria then a provisional TPO will be served.
- 2.3 The TPO does not come into force until it is confirmed by the LPA.
- 2.4 After the initial serving of the TPO there is an opportunity for interested parties to comment on or object to the new orders prior to their confirmation and also appeal against their confirmation.
- 2.5 Should an objection be lodged against the serving of a TPO, the Authority's procedure is that a Planning Committee site visit will be undertaken, during which the objection will be assessed. A subsequent report will be taken to Planning Committee prior to a decision being made in respect of the confirmation of the order.
- 2.6 The Authority's procedure also requires that each TPO will be brought before the Planning Committee for decision as regards confirmation of the TPO, irrespective of whether or not there has been an objection.
- 2.7 Once confirmed a TPO remains in place in perpetuity unless expressly revoked, however this will not necessarily prevent the owner of the tree from carrying out appropriate works provided they have approval from the LPA.

3 Application for Consent to Carry Out Works to Protected Trees

- 3.1 At present, any application to carry out the work to protected trees (either TPO trees or trees within a Conservation Area) is submitted on a standard form setting out reasons for the application and including any justification / reports from relevant experts.
- 3.2 The application is then assessed by the Broads Authority's arboricultural consultant, and as long as the work is deemed to constitute sound arboricultural practice it can proceed. Work that is deemed unnecessary or considered to damage the amenity value of the tree will generally be resisted. If the tree is dead, dying or dangerous then the appropriate measures will be permitted including if necessary the felling of the tree. In this instance replacement planting will often be required.
- 3.3 It is not the intention to issue a TPO on every tree in the Broads Authority area which is of value because, as previously stated, there are strict criteria to be met before a tree is considered worthy of a TPO. The purpose is to ensure

that those trees which contribute most significantly to the landscape and character of the area are protected in order to maintain that character.

4 The 2016 Review of Existing Orders

- 4.1 The Broads Authority has recently carried out a review of all its existing TPOs to assess them against current legislation and to ensure accuracy and consistency between the Orders.
- 4.2 As a result of this review the Authority's arboricultural consultant recommended that 37 of the existing TPOs required re-serving. Whilst still valid, re-serving the orders would strengthen the Authority's position in case of potential challenge as well as enable it to update and strengthen the citation.
- 4.3 The Authority re-served the 37 TPOs on 30 August 2016 and these new orders then became provisional orders. The process of service comprises placing a notice on or near the tree as well as writing to the owner advising them of the reserving. In many cases, neighbouring properties were also notified. Under the relevant legislation owners have a minimum of 28 days to lodge any objection to the provisional order. The provisional orders then require formal confirmation within six months of the date that they were served, at which point they become final TPOs.

5 Consultation and Confirmation

- 5.1 During the consultation period a total of seven representations were received. A total of 34 provisional TPOs received no objection, whilst one received one objection. In addition, one representation was received relating to an inaccuracy in the order (BA/2016/0003/TPO) in Beccles and one related to an issue with the BA boundary (BA/2016/0019/TPO) in Filby.
- 5.2 The Authority's adopted procedure requires TPO's to be confirmed by Planning Committee even if no objection is received. The adopted procedure goes on to state that if an objection is received, then there is a requirement for Planning Committee to undertake a site visit prior to the determination of the Tree Preservation Order.
- 5.3 It is recommended that the 34 TPOs to which no objection was received are confirmed. A list of these trees and TPOs is attached at Appendix 1.
- 5.4 In respect of the TPO to which an objection was received (BA/2016/0036/TPO, this was submitted on the basis of damage to property and the objection is reproduced at Appendix 2. In response, the Broads Authority arboricultural consultant maintains that the trees identified in the order warrant protection and that the order should be confirmed. It is recommended that a site visit be undertaken, in accordance with the adopted procedure.

- 5.5 In the case of the two TPOs where queries were raised, (see 5.2 above), in respect of the first one it was confirmed that the tree no longer existed. In respect of the second one, this tree formed part of a larger area TPO which straddled the boundary between the Authority's area and the adjoining District with the tree falling outside the Broads. It is recommended that neither of these TPOs is confirmed at this point.

6 Financial Implications

- 6.1 The overall review of existing TPOs was completed in 2016. These new orders are a result of the need to ensure that existing TPOs are compliant with the current legislation and are accurate and consistent. There is a minor financial implication in terms of officer time committed to this continual review process and the re-issuing of the new TPO's if confirmed and in the monitoring and administration of them.
- 6.2 Given the Broads Authority's responsibility for protecting the special character of the area and that in the main trees worthy of protection will be identified through the existing planning process and Authority's landscape character review. It is considered that the modest financial implication is justified.
- 6.3 The Broads Authority has an existing Cultural Heritage budget of £30,000 which includes the provision of Arboricultural and Historic Building advice.

7 Conclusions

- 7.1 Broads Authority has a duty to identify trees that are of amenity value and are at risk, and if the trees meet the necessary criteria protect them by means of a Tree Preservation Order.
- 7.2 It is considered that the trees identified in Appendix 1 meet the strict criteria contained in the statutory guidance, the amenity value and the conservation value of the trees in question and therefore orders have been re-served on them.
- 7.3 No objections have been received within the statutory period in the case of the 34 TPO's identified in Appendix 1.
- 7.4 In the case of TPO BA/2016/0036/TPO an objection has been received. The adopted procedure for dealing with objections to TPOs requires that a Members site visit is undertaken before a decision regarding confirmation is made.

Background Papers: A Guide to Tree Preservation Procedures TPO Legislation: The Town and Country Planning (TPO) (England) Regulations
http://www.legislation.gov.uk/uksi/2012/605/pdfs/uksi_20120605_en.pdf

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Date of Report: 23 November 2016.

Appendices: APPENDIX 1: List of Tree Preservation Orders to be confirmed.
APPENDIX 2: Letter of objection to BA/2016/0036/TPO
APPENDIX 3: Tree Preservation Orders – Procedure for Consideration of Objections

List of Tree preservation orders to be confirmed

- BA/2016/0001/TPO **Land At Redwater House And Marsh House Barton Turf** – No Comments
- BA/2016/0002/TPO **The Priory Fritton** - No Comments
- BA/2016/0004/TPO **Wild Duck Caravan Park Belton** - No Comments
- BA/2016/0005/TPO **Hillview Bramerton** - No Comments
- BA/2016/0006/TPO **Part Of Long Plantation And New Plantation Surlingham** - No Comments
- BA/2016/0007/TPO **Land South Of Greengates Brundall** - No Comments
- BA/2016/0009/TPO **Land North of Marsh House Burgh Castle** – 1x Comment, No Objection
- BA/2016/0010/TPO **Rear of Castle Villa Burgh Castle** - 1x Comment, No Objection
- BA/2016/0011/TPO **Colt Court Coltishall** - No Comments
- BA/2016/0013/TPO **Land Around Pump House Coltishall** - No Comments
- BA/2016/0014/TPO **Manor Lodge Coltishall** - No Comments
- BA/2016/0015/TPO **Coldbath House Ditchingham**- No Comments
- BA/2016/0017/TPO **Church Of St Mary Ellingham** - No Comments
- BA/2016/0018/TPO **Land Between Filby Bridge Cottages and Poultry Farm Filby** - No Comments
- BA/2016/0020/TPO **Trinity Barn Filby** - No Comments
- BA/2016/0021/TPO **Land South Of The Lodge Fleggburgh** - 1x Comment, No Objection
- BA/2016/0022/TPO **Land 200 Meters West Of Filby Bridge Filby** - No Comments
- BA/2016/0023/TPO **Dunburgh House Geldeston** - No Comments
- BA/2016/0024/TPO **The Old House Geldeston** - No Comments
- BA/2016/0025/TPO **Hill Farm House Gillingham** - No Comments
- BA/2016/0026/TPO **River Walk Great Yarmouth** - No Comments
- BA/2016/0027/TPO **Land Off Squires Road Halvergate** - No Comments
- BA/2016/0028/TPO **White Lodge Horning** - No Comments
- BA/2016/0029/TPO **The Wherry Hoveton** - No Comments
- BA/2016/0030/TPO **Rear of Blackhorse lodge to Dingley Dell Hoveton** - No Comments
- BA/2016/0031/TPO **Bureside Lodge Hoveton** - No Comments
- BA/2016/0032/TPO **22 Langley Street Langley** - No Comments
- BA/2016/0033/TPO **Broadholme Oulton Broad** - No Comments
- BA/2016/0034/TPO **Broadgate and Fenn Hollow Ludham** - No Comments
- BA/2016/0035/TPO **Land at C and E piggeries Queens Highway Oulton Broad** - No Comments
- BA/2016/0037/TPO **Land West of Thorpe Hall Thorpe St Andrew** - No Comments
- BA/2016/0041/TPO **The Old Rectory Burgh Castle** - 1x Comment, No Objection
- BA/2016/0043/TPO **Land adj Filby sailing base Filby** - No Comments

27 SEP 2016

Martin and Annie Roche

The Malthouse
Wayford Bridge
NORWICH NR12 9LL

26th September 2016

Your reference: BA/2016/0036/TPO

Asa Coulstock
Broads Authority
Yare House
62-64 Thorpe Road
NORWICH
NORFOLK NR1 1RY

Dear Sir or Madam

I object to the renewal of the Tree Preservation Order referred to in your communication in the present form for the reasons stated below:-

- 1) The section of trees in G1 except for one are of very little or no value to public view.
- 2) The section of trees in G1 except for one are causing damage to my Building as they have not been kept in good order and substantial branches have fallen.
- 3) The line of trees is incomplete as there is another Oak beyond/within the sub-station that has not been included in your drawing although I believe was in the original Order.

Yours faithfully



Martin Roche

Telephone: 00 44 (0)1692 581000 Facsimile: 581848



Tree Preservation Orders – Procedure for Consideration of Objections

Town and Country Planning Act

Under the Town and Country Planning Act 1990, a Local Planning Authority may make a TPO if it appears to them to be expedient in the interests of amenity to make provision for the preservation of trees or woodlands in their area (Section 198(1)). There are therefore two criteria: interests of amenity and expediency.

Having made a TPO, a Planning Authority must publish and serve copies on owners and occupiers of land affected by it. There is then a 28 day period in which to object. If no objections are made, the Planning Authority may confirm that Order itself and if the Planning Authority remains satisfied that making the TPO is expedient in the interests of amenity, they should confirm it. Where objections or representations have been made, then the Planning Authority must take them into consideration before deciding whether to confirm the Order.

In March 2000, the Office of the Deputy Prime Minister issued "Tree Preservation Orders : a Guide to the Law and Good Practice". This is not a definitive statement of the law. It is Government policy advice on the system. With regard to the procedure for considering objections or representation the Guide states:

"Considering Objections and Representations

3.36 If objections or representations are duly made, the LPA cannot confirm the TPO unless they have first considered them [Reg. 5 of the Town & Country Planning (Trees) Regulations 1999]. To consider objections and representations properly it may be necessary for the LPA to carry out a further site visit, which would in any case be appropriate if the LPA had not yet assessed fully the amenity value of the trees or woodlands concerned. Any objection or representation made on technical grounds (for example, that a tree is diseased or dangerous) should be considered by an arboriculturist, preferably with experience of the TPO system.

3.37 Discussion between the LPA and any person who makes an objection is encouraged. Discussion can lead to a greater mutual understanding of each sides point of view. This in turn can help clarify the main issues which will have to be considered by the LPA before they decide whether to confirm the TPO. Alternatively, discussions can lead to the withdrawal of objections.

3.38 Since LPAs are responsible for making and confirming TPOs, they should consider establishing non-statutory procedures to demonstrate that their decisions at the confirmation stage are taken in an even-handed and open manner. For example, the LPA officer could prepare a report for the committee or

sub-committee that will decide whether to confirm the TPO. The report could include details of all objections or representations and the LPA officers observations on these in the light of any site visit or discussions with people affected by the TPO. A copy of the report could be 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. The LPA could arrange for members of the committee to visit the site of the trees before making their decision. The visit could be followed by a hearing or inquiry back at the Council offices, where people affected by the TPO and the LPA officer are given a final opportunity to state their case."

A Planning Authority may decide, in the light of any site visit or objections or representations received that a TPO should be confirmed in respect of some of the specified trees and woodlands, but that other trees or woodlands should be excluded from the confirmed Order.

Most TPOs include a direction to ensure that they are brought into effect for a provisional period of six months from the date they are made, this period being long enough for the Planning Authority to conform with the statutory procedures leading up to confirmation. If the Planning Authority fail to make their decision before the six-month period has expired, trees included in the TPO will cease to be protected. In addition, the DoE Guide asks Planning Authorities to bear in mind the desirability of reaching their decision and confirmation without undue delay.

Broads Authority's Scheme of Delegated Powers

The Broads Authority has delegated its functions in respect of trees to the Planning Committee. In turn, the Planning Committee have delegated to officers the power to make and serve TPOs.

The Secretary of State has expressed the view that in confirming TPOs, the Local Planning Authority will be acting in a quasi-judicial capacity. In considering objections to a TPO, the Planning Authority should follow the rules of natural justice.

There are two basic rules of natural justice. The first rule requires the maker of a decision to give prior notice to persons affected by it and for those persons to be able to put their case. The second rule disqualifies a person from acting if he has a direct pecuniary or proprietary interest or might otherwise be, or give the appearance of being, biased.

In addition, those who take quasi-judicial decisions must take into account the right considerations and not take into account considerations which are irrelevant.

Procedure

Having regard to the above, the Authority has adopted the following procedure for considering objections to Tree Preservation Orders:

- (1) The objector will be given the opportunity to amplify in writing their formal position. The Authority's officers will then have to prepare a statement of

case and response to objections (within, say, two weeks). The objector will then have a further period (say, two weeks) to comment in writing on the Authority's case.

- (2) The Committee will conduct a site visit to view the Tree Preservation Order site. The site visit is to be a fact finding exercise, to view the site of the Order. At the site visit, the objectors, officers and other interested parties may, at the Chairman's invitation, inform the Committee of any relevant points of fact and clarify any points arising from written representations. No decision is to be taken on site.
- (3) At a subsequent meeting of the Committee, the written submissions will be considered. The Committee may also consider representations from third parties. Having considered all representations, the Committee will decide whether to confirm the Order. Officers, objectors and third parties will be able to attend the Committee meeting to provide any further information required by members of the Committee. The Committees protocol for public speaking will apply.