

Planning Committee

02 February 2024

Agenda item number 11

Tree Preservation Order- Proposed site visit- Crabbett's Marsh (BA/2023/0027/TPO)

Report by Historic Environment Manager

Summary

Objections have been received to a provisional Tree Preservation Order (TPO) and, as required by the Authority's Scheme of Delegation, this TPO will need to be determined by the Planning Committee. This report considers whether a site visit is required prior to the determination of the TPO.

Recommendation

That Members of the Planning Committee undertake a site visit for a provisional TPO at Crabbett's Marsh, Horning (BA/2023/0027/TPO).

1. Background

- 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 which are under threat. There are criteria set out in The Town and Country (Tree Preservation) (England) Regulations) 2012 against which a tree must be assessed in order to determine whether it meets the threshold for protection.
- 1.2. This report explains how this process has been carried out in respect of a woodland area at Crabbett's Marsh, Horning (BA/2023/0027/TPO).

2. Tree Preservation Order procedure

- 2.1. There are two prerequisites which must be met for a tree to be considered for protection through a TPO. Firstly, the tree must be of amenity value, and secondly it must be under threat. There are many trees in the Broads (and elsewhere) which are of sufficient amenity value to qualify for TPO status, but which are not protected as they are not under threat. The TPO process is not a designation like, for example, a Conservation Area which is made following an assessment of particular character, but is effectively a response to a set of circumstances.
- 2.2. Typically, the consideration of a tree for a TPO designation will arise in connection with a development proposal, either through a formal planning application or a pre-Planning

application discussion. At a site visit or when looking at photos or other visual representation, a case officer will see there is a tree on the site which is potentially of amenity value and under threat from the proposed development and this will trigger the TPO process. The case officer will consult the Authority's Arboricultural Consultant and he will visit the site and make an assessment of the tree under the 2012 Regulations. If the tree is considered to meet the criteria in the Regulations, then a provisional TPO will be served.

- 2.3. After a provisional TPO has been served there is a consultation period, which gives the opportunity for the landowner and other interested parties to comment on it. The Regulations require that a provisional TPO must be formally confirmed by the LPA within 6 months of it being served; if it is not confirmed then it will lapse automatically.
- 2.4. The Authority's scheme of delegation allows provisional TPOs to be served under delegated powers and for non-controversial TPOs (i.e. where no objections have been received) to be confirmed by officers under delegated powers. Where an objection has been received as part of the consultation process, Members can decide to undertake a site visit to view the tree prior to making a decision on whether or not to confirm the TPO. Guidance on when it is appropriate to undertake a site visit is similar to that which applies in respect of a planning application. This is set out in Appendix 3 of the [Code of Practice for members of the Planning Committee and officers \(broads-authority.gov.uk\)](https://www.broadshires.gov.uk/authority/practice-for-members-of-the-planning-committee-and-officers). The circumstances in which this would be appropriate include:
 - where the issues are finely balanced;
 - where the impacts on neighbour amenity or the wider landscape are difficult to envisage other than by site assessment; or
 - it is beneficial in the interests of local decision-making to demonstrate that all aspects of the proposal have been considered on site.
- 2.5. The grounds of the objection will be reported to the Planning Committee in order to inform the decision on whether or not to undertake a site visit, and a recommendation will be made by officers.
- 2.6. The details of the objection will only be discussed at the meeting where a decision is to be made on whether or not to confirm the TPO.

3. Potential Tree Preservation Order at Crabbett's Marsh, Horning

Site at Crabbett's Marsh, Horning

- 3.1. The subject trees are a part of a large area of wet woodland consisting primarily of alder, willow and birch trees.
- 3.2. Crabbett's Marsh is a large area of wet woodland to the west of Horning and situated to the rear of the riverside chalets at Bureside Estate. It is accessed off Horning Road

(A1062), via South Quays Lane. South Quays Lane and Woodlands Way Road form the eastern boundary of the site, with the southern boundary being to the north of the chalets. Its western edge runs along Hoveton Little Broad. The River Bure is located to the south of the TPO'd area. An unsurfaced track runs from South Quays Lane, providing vehicular and pedestrian access to the marsh plots and chalets. The woodland has been divided into plots, many of which back on to one of the dykes, and consequently there are a number of different owners. Historically there have been no boundary treatments or demarcations to the plots, so the woodland has the appearance of a homogenous block.

- 3.3. The wet woodland is primarily made up of alder, birch and willow. It potentially has a long lifespan and the carr has high visual amenity across a wide area, for example from Hoveton Little Broad, the River Bure and Horning Road. Wet woodland is also considered a UK BAP Priority Habitat (these are the habitat types that are identified as being most threatened and requiring conservation action under the UK Biodiversity Action Plan (UK BAP)).
- 3.4. There is considered to be a threat to the woodland due to the incremental clearance by land owners, in particular from plot owners. Much of the clearance is well meaning, as owners seek to 'tidy' the plot or clear access to the dykes at the rear.
- 3.5. On 24 October 2023 a provisional TPO was served on the woodland. This must be confirmed by 24 April 2024.
- 3.6. The provisional TPO was served as part of the Broads Authority's TPO Review process in order to ensure that the order meets current legal requirements. There was an existing TPO that covered exactly the same area and had exactly the same restrictions. This has now been revoked with an identical provisional TPO having been served.
- 3.7. 14 representations were received from consultees. Having responded to the points raised in these representations, the Authority received two objections to the TPO. These are listed in the Statement of Case at Appendix 1.

4. Site visit consideration

- 4.1. A copy of the objections to the provisional TPO and the responses from the Authority's Arboricultural Consultant and Head of Planning to the representations received are set out in a Statement of Case, attached at Appendix 1.
- 4.2. The main issues raised by the objection(s) are set out in the Statement of Case.
- 4.3. A presentation on the TPO will be provided at the 01 March 2024 meeting of the Planning Committee with photographs of the woodland and its context, including the neighbouring properties and the local area.
- 4.4. The level of concerns expressed is acknowledged and due to the nature of the site and the issues facing it, it is considered that it would be beneficial for Members to visit the site so that they could view the issues directly.

- 4.5. If a site visit is deemed necessary then it must be held with consideration for the report deadline of 16 February 2024 associated with the Planning Committee meeting when the TPO is to be determined.
- 4.6. The report for the 01 March 2024 meeting of the Planning Committee will detail recommendations for consideration regarding the confirmation of the TPO.

5. Recommendation

- 5.1. That Members do undertake a site visit.

Author: Kate Knights

Date of report: 18 January 2024

Background papers: TPO BA/2023/0027/TPO

Appendix 1: Statement of Case - Provisional TPO at Crabbett's Marsh, Horning

Appendix 1 – Statement of Case – Provisional TPO at Crabbett’s Marsh, Horning

1. Introduction

- 1.1. It is the Authority’s practice to provide Members with a Statement of Case, outlining the issues under consideration.
- 1.2. Two objections been raised to the provisional TPO.
- 1.3. As well as the points raised by the objector and the Authority’s response which are set out in the table below, there are other considerations. The woodland consists of a variety of trees including alder, birches and willow. They will have some longevity of life and they are considered to contribute to the visual amenity of the area. More generally, trees increase resilience to climate change and improve air quality in the area, aid biodiversity and encourage wildlife, particularly given the significance of the carr woodland habitat.

2. Representations and responses

- 2.1. The issues raised by the objector and the response provided by the Broads Authority’s Arboricultural Consultant and Head of Planning are set out below:

No.	Representation	Response
1	<p>Challenge of the legitimacy of the TPO for the following reasons:</p> <ul style="list-style-type: none"> 1. the conservation of the woodland alone is not enough to justify a TPO and Crabbett’s Marsh is not a SSSI; 2. Maintenance of vehicular access must continue to be maintained and the objector will support any objection by the Marsh Roadway maintenance to interference by the Broads Authority on the maintenance, repair and management of the road; 3. There is no public access to the TPO’d area and there cannot therefore be any amenity value; 4. The objector reserves the right to invoke para 082 immediately in order to ‘abate a nuisance’ pertaining to any tree that interferes with tiles or guttering of their building or could be reasonably expected to so in inclement weather and the email 	<p>The Broads Authority is the Local Planning Authority for the area. In line with the Town and Country Planning Act 1990, if it appears to a Local Planning Authority that it is expedient, in the interests of amenity, to make provision for the preservation 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.</p> <p>Given both the high amenity value as well as the importance of wet woodlands, a rare woodland type, as well as the associated high biodiversity value for Crabbett’s Marsh, it is wholly appropriate and legitimate of the Broads Authority to serve the Tree Preservation Order to</p>

No.	Representation	Response
	<p>to the BA is formal notification of that putting the BA on notice;</p> <p>5. Plot K has a Lawful Development Certificate and is classed as a residence for Council Tax purposes and includes ‘a garden or grounds’. Government guidance states that it would be unlikely for a garden to be covered by a Woodland TPO;</p> <p>6. The Broads Authority do not have the authority to serve TPOs being unelected, unaccountable and policing themselves;</p> <p>7. The TPO does not improve navigation, one of the BA’s purposes and so it places the BA in contravention of its own remit;</p> <p>8. The objector has an inordinate dislike of unelected bodies imposing sanctions on taxpayers.</p>	<p>protect this distinctive woodland habitat.</p> <p>A Tree Preservation Order is not made to prevent any works to trees but to control inappropriate works and potential harm to trees. In this case any reasonable works required to ensure the unhindered access along the principal access road through Crabbett’s Marsh, to Bureside Estate, will be approved. The Broads will work with owners of the properties within the Marsh to ensure the best management of the trees and woodland.</p> <p>With regards the relevance of the ‘Woodland Order’ in reference to ‘a garden or grounds’, as the property is set within and surrounded by Crabbett’s Marsh woodland the order is clearly appropriate.</p> <p>As with the principle access through the woodland, trees affecting navigation will be dealt with in a similar manner. The Broads Authority will seek to work with landowners to ensure the best management of the trees and woodland and any application for reasonable works to provide unhindered navigation will be approved.</p> <p>A number of the other matters raised are not relevant to the consideration of the TPO.</p>
2	<p>Objects on the basis that there is an 8 week wait for applications to carry out works to dead, fallen or falling trees either side of the roadway or on the North of the sleeper path, which would be dangerous and a safety concern to plot holders and residents. Trees</p>	<p>This is incorrect as under the Town and Country Planning Act 1990, where it is “urgently necessary to remove an immediate risk of serious harm” consent is not required. In these cases, the owner/applicant would be asked/advised to provide</p>

No.	Representation	Response
	need to be managed and replaced when they reach the end of their life.	photographic evidence of the tree in question, to the Broads Authority, prior to undertaking the required works, both to protect themselves and the Broads from potential future allegations of illegal works/felling.

2.2. Members should consider this Statement of Case when carrying out the site visit and when considering whether to confirm the TPO.

