

Tree Preservation Order Objection
Report by Historic Environment Manager

<p>Summary: It has previously been agreed by members that the identification of trees worthy of preservation and the protection of such trees by means of a Tree Preservation Order be an ongoing process and that Tree Preservation Orders will be brought before the Planning Committee for confirmation.</p> <p>A Tree Preservation Order has been issued and formal objections to the Order received. The Broads Authority has a procedure for dealing with objections to TPOs prior to a decision being made regarding confirmation.</p> <p>Recommendation: That, following the Planning Committee site inspection, members consider whether or not to confirm the Tree Preservation Order at the Haven, Ropes Hill Dyke, Horning.</p>

1 Introduction

- 1.1 As part of its obligation as a Local Planning Authority the Broads Authority is required to serve Tree Preservation Orders on trees which are considered to be of amenity value and are at threat. There are criteria set out in "*Tree Preservation Orders a guide to good practice*" DTER (March 2008) against which a tree must be assessed against before it can be considered for preservation.
- 1.2 Furthermore the Broads Strategic Priorities agreed by Full Authority for 2009 - 2012 included a priority to implement an integrated approach to managing the Broads Landscape. This would include identifying Trees of amenity value within the Broads Authority area not currently statutorily protected and to protect those trees by serving Tree Preservation Orders on them.
- 1.3 It is intended that, rather than surveying the entire Broads area, trees of significant amenity value are identified as part of the planning process and the Authority's continuing landscape character assessment work.
- 1.4 Under legislation all Tree Preservation Orders require confirmation by the Local Planning Authority before they finally come into force.
- 1.5 Currently all new and any amendments to existing orders will be brought before Committee for confirmation.

1.6 Appended are details of a Tree Preservation Order that has been issued at the Haven, Ropes Hill Dyke, Horning (Appendix 1)

2 TPO Procedure.

2.1 As previously stated, the Broads Authority is obliged to protect trees worthy of preservation by means of Tree Preservation Orders. There are National criteria set out against which tree should be assessed against in order to determine whether it is worthy of preservation.

2.2 When trees are put forward as being worthy of protection they will be assessed against the prescribed criteria. If the tree meets these criteria then a Tree Preservation Order will be served.

2.3 The Order is then required to be confirmed by the Local Planning Authority.

2.4 There is an opportunity for interested parties to 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 has an adopted procedure in place for dealing with these matters.. A Planning Committee site inspection will be convened to assess the objection, through visiting the site and reporting back to Planning Committee prior to a decision being made in respect of the confirmation of the order. The adopted procedure is appended to this report (Appendix 2).

2.6 Currently each Tree Preservation Order, irrespective of whether there has been an objection, will be brought before the Broads Authority's Planning Committee for decision as regard to Confirmation of the Order. However, members have identified that, where these are non-contentious, they do not need to be brought to Committee for consideration (See Agenda item 12).

2.7 Once confirmed, a Tree Preservation Order 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 Local Planning Authority.

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 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.

4 Background.

- 4.1 The site at the Haven at Ropes Hill, Horning has recently been re-developed with a replacement dwelling. As part of the assessment of the site during the planning application process the Weeping Willow (Salix) to the riverside of the dwelling was identified as being of very high amenity value and has subsequently been retained.
- 4.2 The tree was identified as being of sufficient amenity value as to warrant a Tree Preservation Order when assessed against the national criteria using the prescribed TEMPO method of assessment. A Tree Preservation Order was subsequently served on the 9 December 2011 and the owner and other parties including neighbouring properties notified in accordance with the regulations.
- 4.3 Two objections have been received to the Order one from the owner of the tree and one from a close neighbour at Heronshaw, Ropes Hill. The Broads Authority arboricultural consultant has formally responded to those objections in line with TPO procedure.

5 Assessment.

- 5.1 The Tree has been assessed against national criteria using the prescribed TEMPO method of assessment. This method scores the tree against factors such as condition, retention span, public visibility and others including principle component of arboricultural features (prominence), veteran status, group value, historic, commemorative or habitat importance and physical form. Any potential threat to the tree is also assessed. The resulting score will determine whether or not a TPO is appropriate and defensible. A score of over 11 out of 25 suggests that the TPO is defensible, a score of over 15 out of 25 definitely merits a TPO. The Tree was assessed at 19 out of 25 definitely meriting a TPO.
- 5.2 Two objections to the TPO have been received and can be summarised as follows:

(1) **Safety:**

The tree:

- is old and of large scale with a rotten centre, branches fall off from time to time as a danger to the occupants and the users of a very busy dyke between it and the sailing club. Recently a similar tree upriver of Wroxham fell and necessitated the emergency closure of part of the Navigation.

- is poorly sited and prevents effective monitoring of the river during races and regattas from the neighbouring club rostrum resulting in an acute difficulty of monitoring race craft and passing pleasure, hire boats and commercial vessels leading to risk of collision, damage to craft and injury to persons.
- encroaches into Ropes Hill Dyke, narrows the channel, restricts the passage of craft and reduces the view of skippers upon exit into the main river, an important 'splay'.

(2) **Environmental**

The tree:

- is non-native and was originally planted for ornamental purposes. Its growth is too vigorous and unsuitable for being so close to the river. A more suitable landscape plan could be adopted.
- Recent bat surveys identified a management plan for roosting with compensatory installation of bat boxes etc. The nearby drainage dyke trees and Crabbett's Marsh provide adequate roosting for bats and numbers are limited by food supply and range and not accommodation.
- The considerable shedding of foliage and small branches into the neighbouring water course constitutes a major source of sediment build-up at a location which is vital for dyke navigation and sailing vessel draft. (Broads Authority Policies mention the desirability of excluding trees from being too close to navigations).

(3) **Access and Amenity**

- The scale and siting of the tree impedes the general navigation contrary to the Broads Authority policies of encouraging sailing vessels making way on the Broads
- The particular problem is the hindrance of classic sailing boats based at Horning Sailing Club and at their regattas and also for the sailing school and classes of younger sailors and those learning to sail.
- The trees location on the site also restricts the useable width of the dyke and militates against the safe and comfortable mooring of the Lottery Supported training vessel moored opposite
- From the TreeCare consultants report one can see that the life expectancy of this tree is now between seven and seventeen years and as a Category C Tree it is a tree of low quality and value and carries a medium risk as a hazard

- Over the years there have been many willow trees on this plot and many if not all have caused problems one way or another. Some have fallen into the river causing problems for river users and access for residents of the dyke whilst others have obstructed vision for users of the Horning Sailing Club and residents down the river.

(4) **General**

- Horning Sailing Club I know have issues with sight up the river for their races etc and general safety with all their members especially their young learners and therefore I feel their comments should be sought as regards this Tree Preservation Order. Some residents of Ropes Hill Dyke will have comments as regards access to the dyke by river craft.
- My current plans for this tree are to keep it as long as possible as it gives excellent cover to the main house and I will continue to work with all parties as regards trimming and maintaining but as the tree report concludes its life expectancy is only for a few more years now and I feel I should be in control of its destiny rather than a TPO.

The owner also raised the following regarding the issuing of the TPO:

I would also like to highlight a problem with receiving this TPO which should not be taken as a criticism of the Broads Authority rather than something to consider that might help others in the future.

Would it be possible that if a TPO is served on what might be considered a holiday home that every effort is made by the Broads Authority to make sure that notification of the TPO has reached the owner.

5.3 The Broads Authority arboricultural consultant has prepared a statement addressing these objections which can be summarised as follows:

- Shedding limbs and foliage. This is accepted, however, it is part of having a tree in close proximity to the river and this issue can be managed as part of regular management and maintenance of the tree and, in this case, is not deemed sufficient a problem to not protect the tree.
- Position. Whilst it is suggested that the tree is poorly sited it cannot be argued that it is not of high visual amenity and helps maintain the landscape character of the site and surrounding area. The tree is the last remaining tree on the river frontage of the site following recent development and provides an element of screening both to and from the new dwelling.
- Bats, ecology was not considered as part of the assessment of the tree preservation order, and the objector's points are accepted with regards to habitat in the adjacent Crabbets Marsh. However, as a large, previously

pollarded tree adjacent to the river it does have wildlife value as a habitat for invertebrates.

- Access. The tree has been in situ for a number of years and has been maintained as part of the management of the site in the past along with a number of other trees that have recently been removed. Any major problems with access that are caused by the tree can be reduced or managed through the on going management of the tree. This will not be impeded by the TPO it will just allow the Authority to control the level of works and ensure that no indiscriminate work takes place.
- The Category C classification is a planning classification giving the tree 10 - 20 years useful life expectancy and as the tree was not threatened by the recent planning application this was accepted. However, what the assessment fails to address is the high visual amenity of the tree in terms of the screening to and from the new dwelling and the benefit this gives in helping to maintain the riparian character of the site. The useful life expectancy of the tree could be extended through good Arboricultural management. With regards the hazards to navigation discussed in the report these also can be managed to allow the retention of the tree (something the owner is keen to do).
- The previous failure of trees on the site was probably due to lack of management. The tree subject to the TPO, if managed correctly is unlikely to fail and cause problems for river users.
- As is clear, the owner does want to retain the tree as "it gives excellent cover to the main house" and therefore it is clear that the tree is not threatened at present. However, given the clear strength of feeling of other interested parties it is my opinion that a tree preservation order is expedient as it will give the Broads Authority a level of control over the future management of the tree and allow the Authority to secure its replacement should removal ever be approved.
- It should be noted that it is never the policy of the Authority to serve TPO's to prevent any future works to trees. The principle behind the TPO is to prevent unnecessary and damaging works to important trees, and seek suitable solutions to the good Arboricultural management of trees in conjunction with the tree owners and other concerned parties thereby maintaining a safe and viable tree population within the Broads.

6 Financial Implications

- 6.1 The overall review of existing Tree Preservation Orders was completed in 2010. The serving of BA/2011/0040/TPO is a result of the continual process of covering trees worthy of protection with Tree Preservation Orders which is ongoing. There is a financial implication in terms of officer time to this continual process and the issuing of a new TPO and if confirmed and in the monitoring and administration of it.

- 6.2 Statistically over the last two years the number of new orders served averages 3.5. Although of course this number has the potential to increase or decrease year on year it does begin to give an indication of the likely level of administration and monitoring required.
- 6.3 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.
- 6.4 The Broads Authority has an existing budget of £30,000 for the protection of Cultural Heritage which would fund the work.

7 Conclusions

- 7.1 The 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 Willow Tree subject of BA/2011/0040/TPO meets 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 served on them.
- 7.3 Two objections have been received within the statutory period in respect of BA/2011/0040/TPO.
- 7.4 The Broads Authority has an adopted procedure for dealing with objections to TPO's (Appendix 2). The procedure requires in the first instance that a Planning Committee site inspection takes place.
- 7.5 At the meeting on 2 March 2012, the Planning Committee agreed to carry out a site inspection in line with the adopted procedure for dealing with objections to Tree Preservation Orders. The date for this was 23 March 2012. All documents relating to the TPO, including representations were made available for the site inspection.

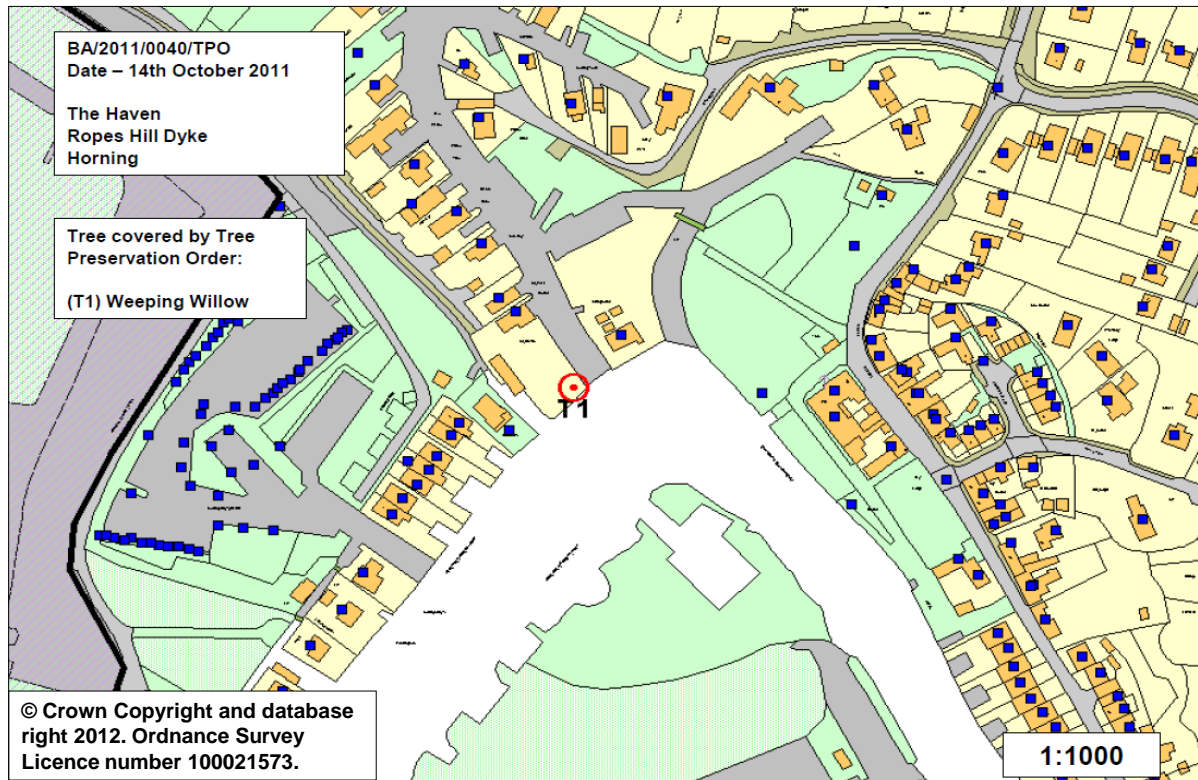
Background Papers: TPO File BA/2011/0040/TPO

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Appendices: APPENDIX 1: Details of Tree Preservation Order BA/2011/0040/TPO
The Haven, Ropes Hill, Horning, Norfolk
APPENDIX 2: Tree Preservation Orders – procedure for dealing with objections

**BA/2011/0040/TPO - The Haven, Ropes Hill Dyke, Horning
Weeping Willow - 14th October 2011**



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.

a. Government Policy Advice

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.

b. "Rules" for Considering Objections

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.