

Confirmation of New Tree Preservation Orders (TPOs)
Report by Historic Environment Manager

Summary: Members have previously agreed that the identification of trees worthy of preservation and the protection of such trees by means of a Tree Preservation Order should be an ongoing process and that Tree Preservation Orders should be brought before Planning Committee for confirmation.

Four Tree Preservation Orders have been issued recently and these orders require confirmation by members.

Recommendations:

- (i) That the four new Tree Preservation Orders be confirmed.
- (ii) That the Committee notes the continuing process of review and designation of trees worthy of protection as previously agreed and that confirmation of any new orders will be a matter to be determined by the Committee.

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 the Law and Good Practice" (2005) Department for the Communities and Local Government*, 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 All new and any amendments to existing orders will be brought before Committee for confirmation.
- 1.6 Appended are details of the four Tree Preservation Orders that have been issued since the last report to members. (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 a 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 then a procedure exists. A Planning Committee site inspection will be set up 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. (Appendix 2).
- 2.6 Each Tree Preservation Order, irrespective of whether there has been an objection, will be brought before the Broads Authority Planning Committee for decision as regards Confirmation of the Order.
- 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.

- 3.3 It is not the intention to issue Preservation Orders on every tree in the Broads Authority area of any value (as previously stated there are strict criteria to be met before a tree is considered worthy of a TPO) but merely 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 Programme of Designation.

- 4.1 The identification of new designations is on going. A number of the Planning staff have now received training from the Broads Authority arboricultural consultant regarding the criteria based approach to assessing the suitability of trees for Preservation. The Tree Preservation Orders issued since the last report to Committee are put forward for confirmation.
- 4.2 It is intended to bring any future new Tree Preservation Orders to Committee for confirmation as and when required. This will take the form of a regular update.
- 4.3 The existing procedure for Planning Committee to undertake a site visit and then to determine any Tree Preservation Orders should an objection be lodged will remain unchanged.
- 4.4 In the case of the four Tree Preservation Orders, requiring confirmation, listed in Appendix 1, no objections have been received to:

BA2011/0027TPO. – South of 20 Langley Street, Langley.

BA2011/0028TPO. – Junction of Church Lane and Hardley Street, Hardley.

BA2011/0032TPO. – Land at Horsefen Road, Ludham.

BA2011/0041TPO. – The Grange, Grange Walk, Wroxham.

5 Financial Implications

- 5.1 The overall review of existing Tree Preservation Orders was completed in 2010. These four new orders are 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 the four new TPOs if confirmed and in the monitoring and administration of them.
- 5.2 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.
- 5.3 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.

- 5.4 The Broads Authority has an existing budget of £30k for the protection of Cultural Heritage which would fund the work.

6 Conclusions

- 6.1 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.
- 6.2 It is considered that the trees identified in Appendix 1 and listed below 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 served on them.
- 6.3 No objections have been received within the statutory period in the case of –
- BA2011/0027TPO. – South of 20 Langley Street, Langley.
BA2011/0028TPO. – Junction of Church Lane and Hardley Street, Hardley.
BA2011/0032TPO. – Land at Horsefen Road, Ludham.
BA2011/0041TPO. – The Grange, Grange Walk, Wroxham.
- 6.4 A continuing process of identification of trees which are of amenity value and meet the necessary criteria, making them eligible for preservation, is in the interest of protecting the special landscape character of the Broads area.

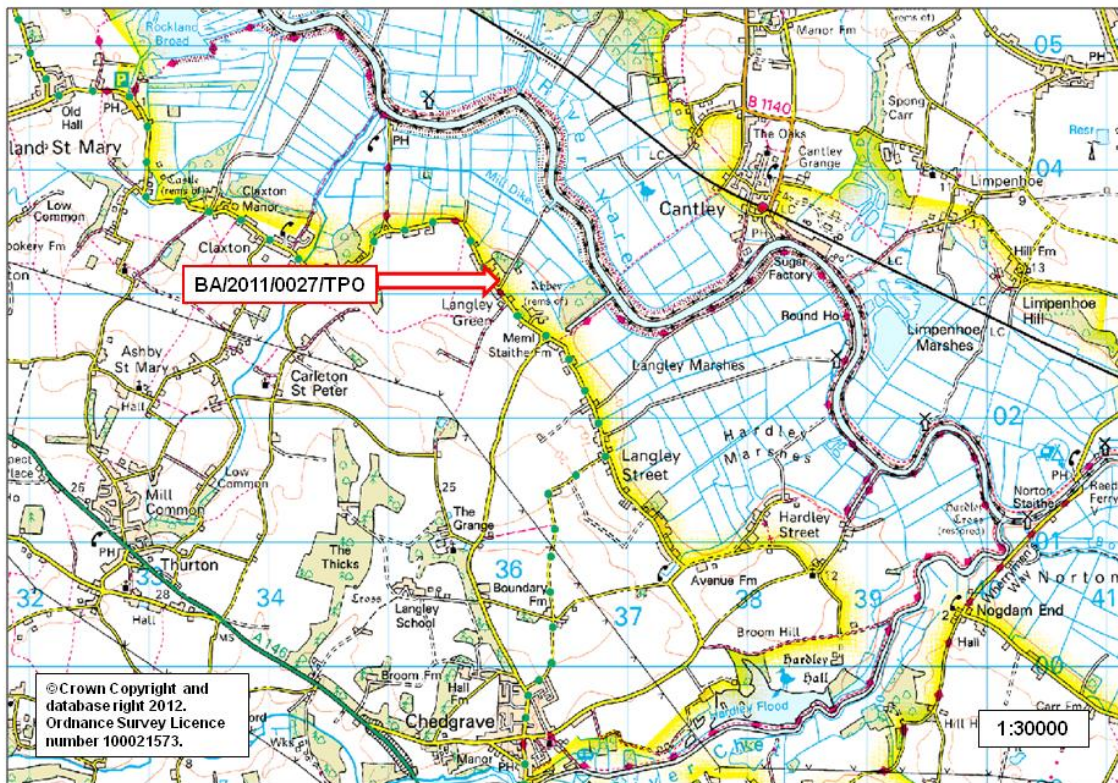
Background Papers: Nil

Author: Ben Hogg
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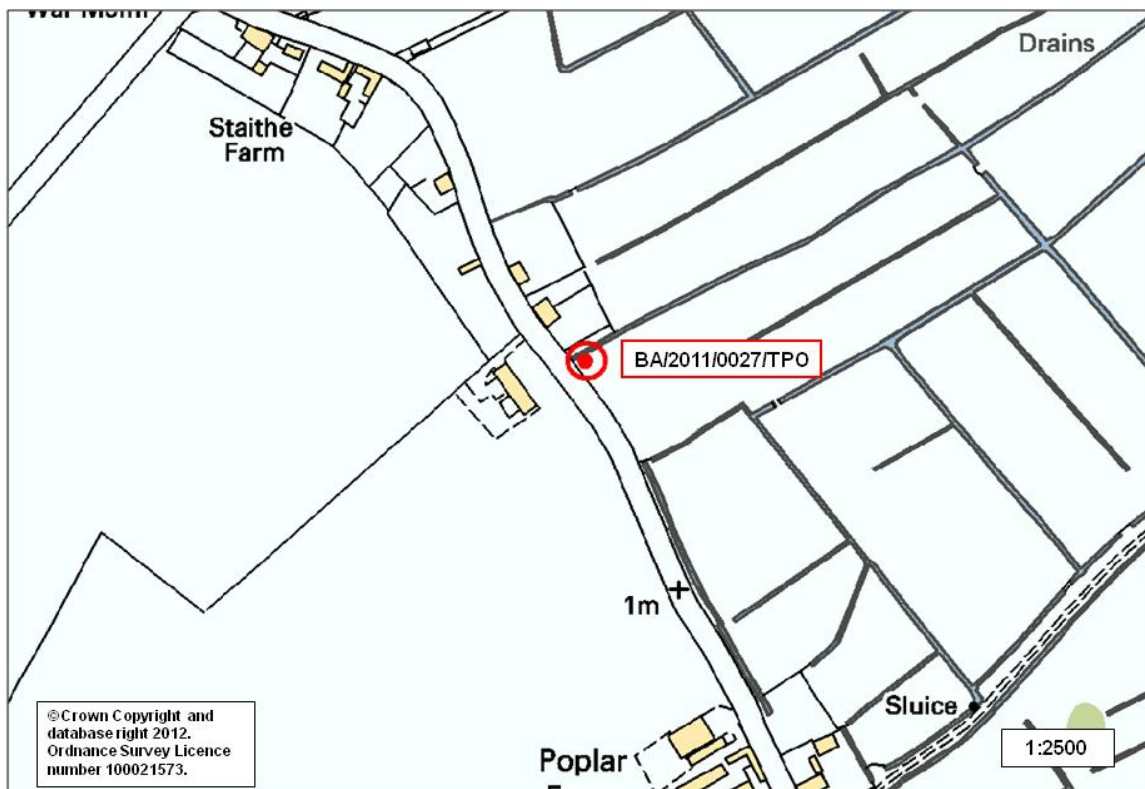
Appendices: APPENDIX 1: Maps showing location of Tree Preservation Orders to be confirmed
APPENDIX 2: Tree Preservation Orders – Procedure for Consideration of Objections

APPENDIX 1

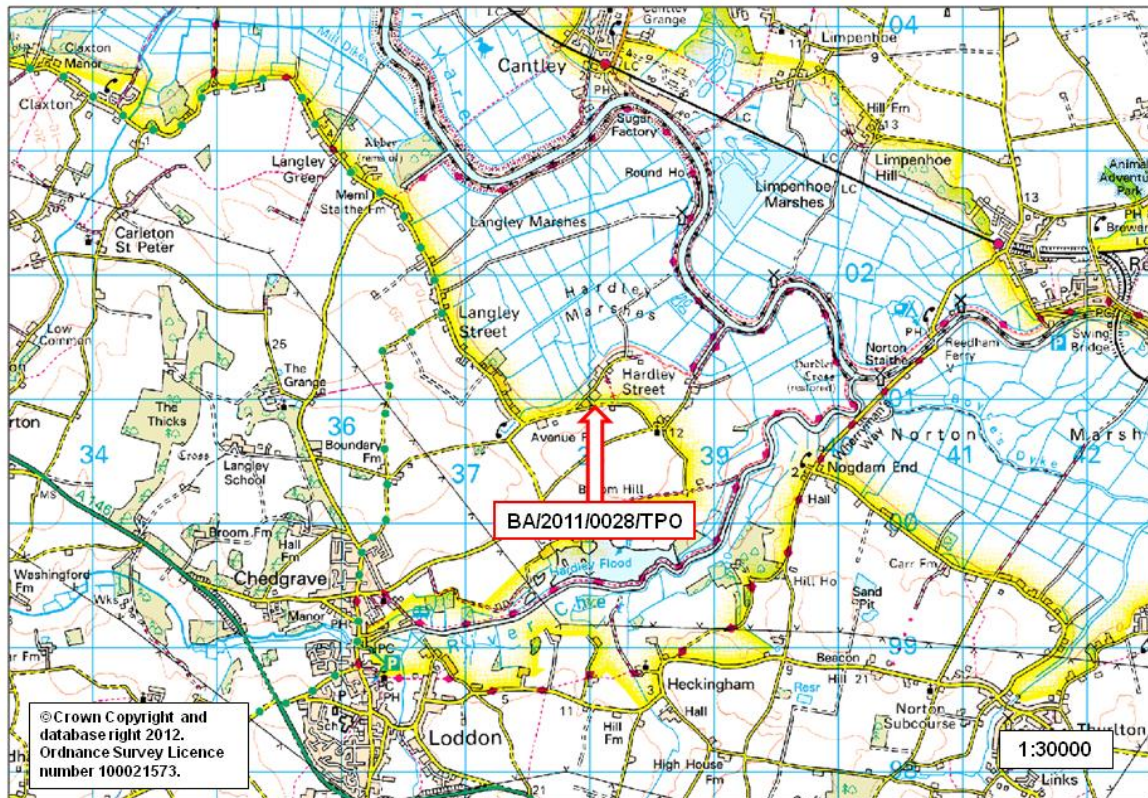
BA/2011/0027/TPO - Land To South Of 20 Langley Street, Langley
Willow Tree to south of dwelling at Langley Street, Langley



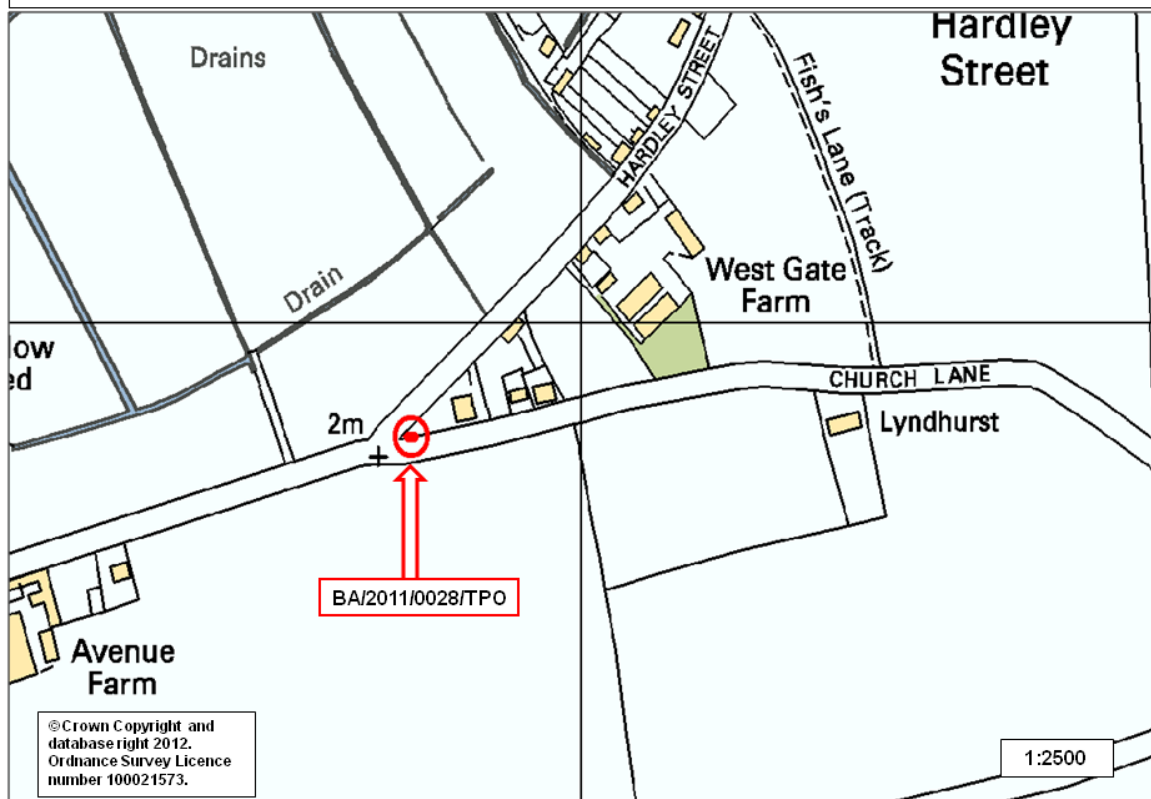
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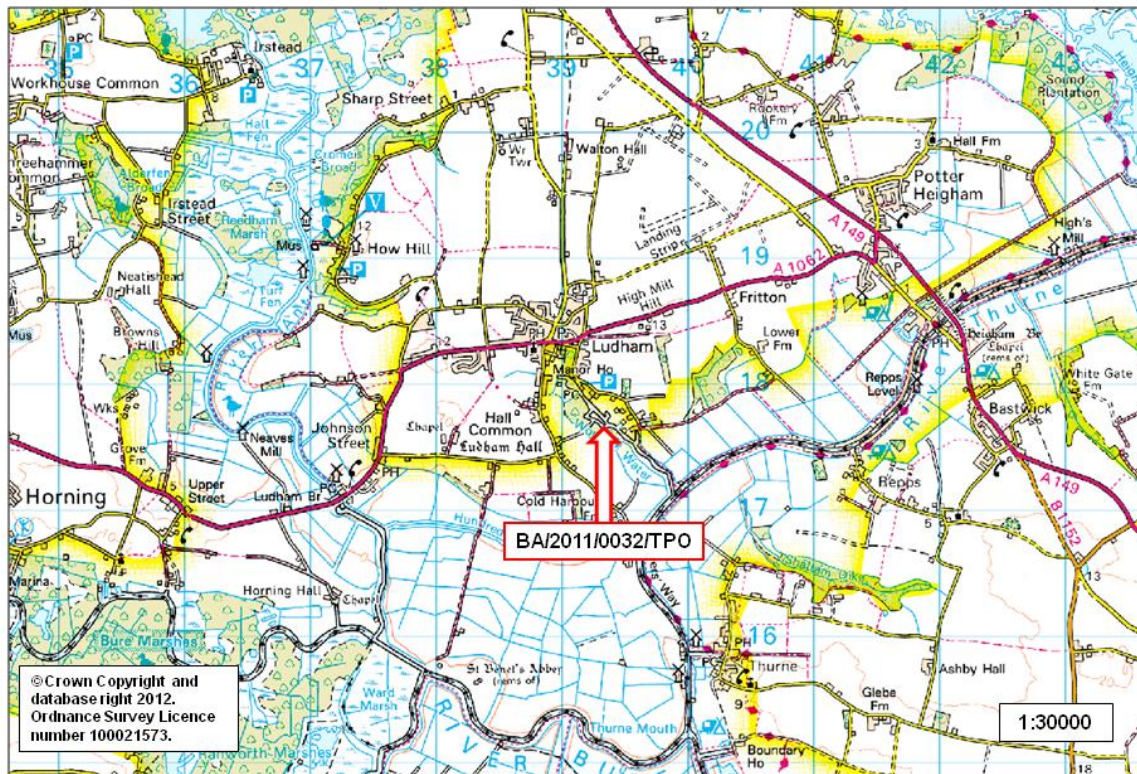
BA/2011/0028/TPO - Land At Junction Of Church Lane And Hardley Street, Hardley
Oak tree with vey high visual amenity



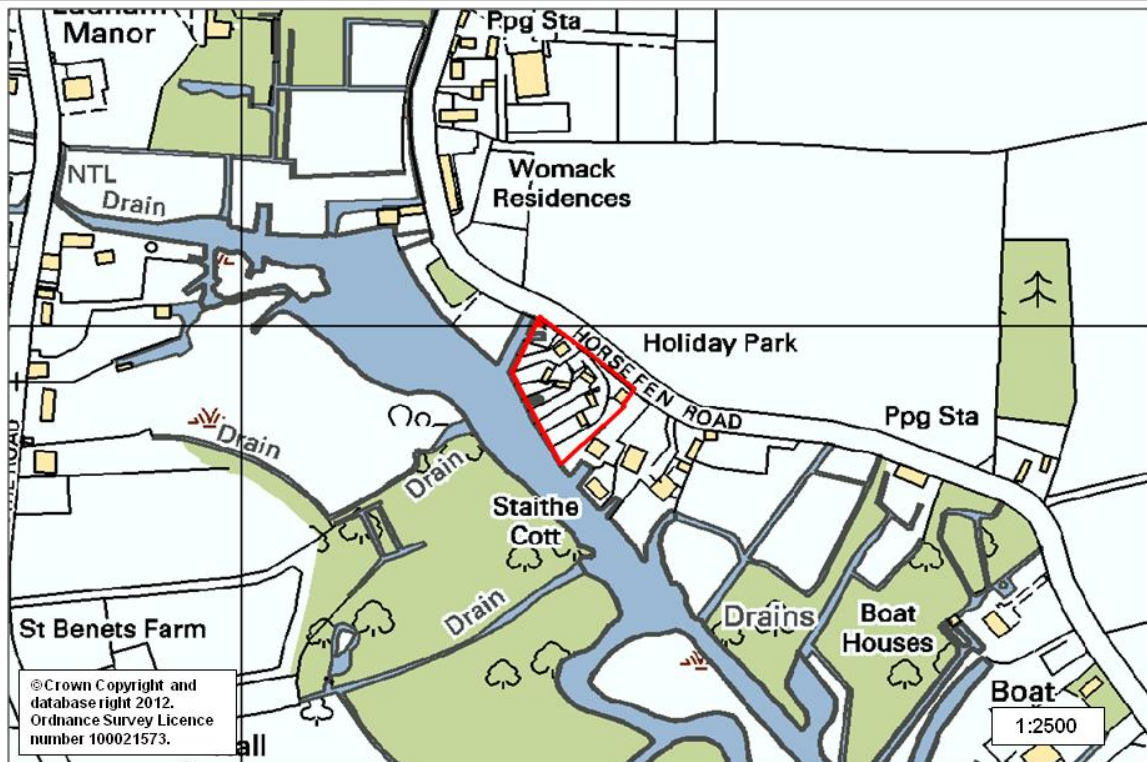
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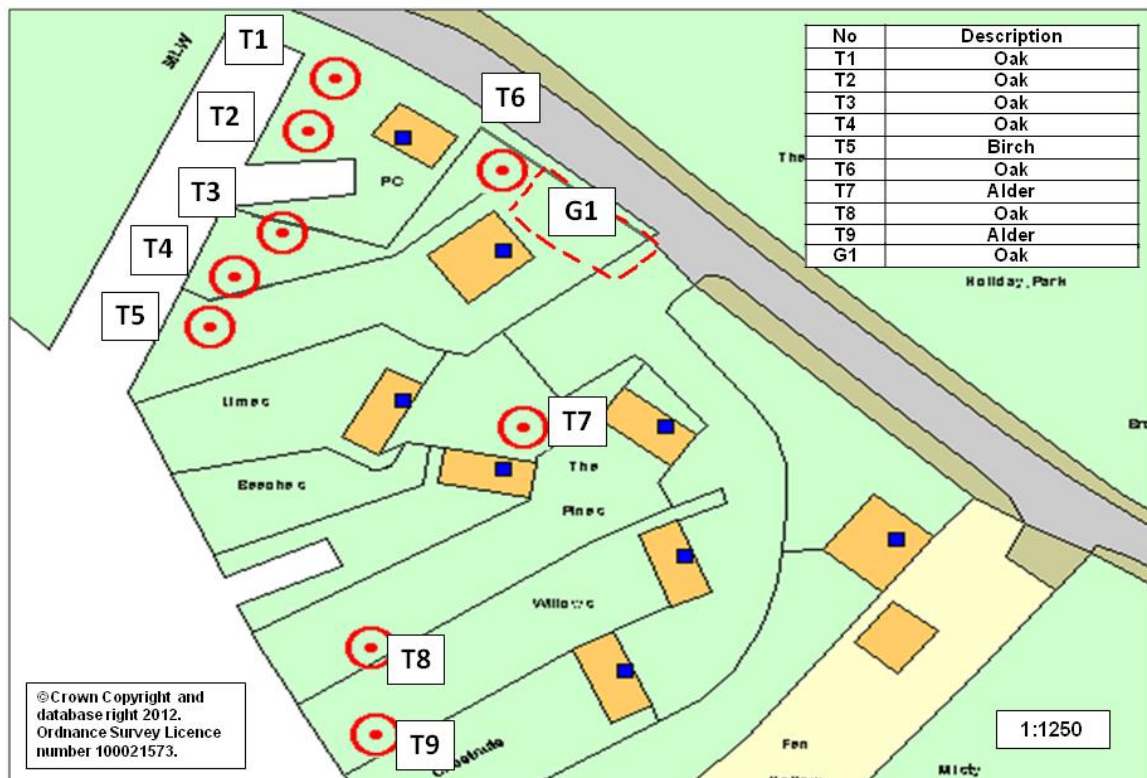
BA/2011/0032/TPO - Land At Horsefen Road, Ludham, Norfolk
Original TPO was for whole area. BA Tree Officer is now under the impression a TPO detailing the specific trees would be more beneficial. All trees are of high amenity value and warrant the protection of a Tree Preservation Order



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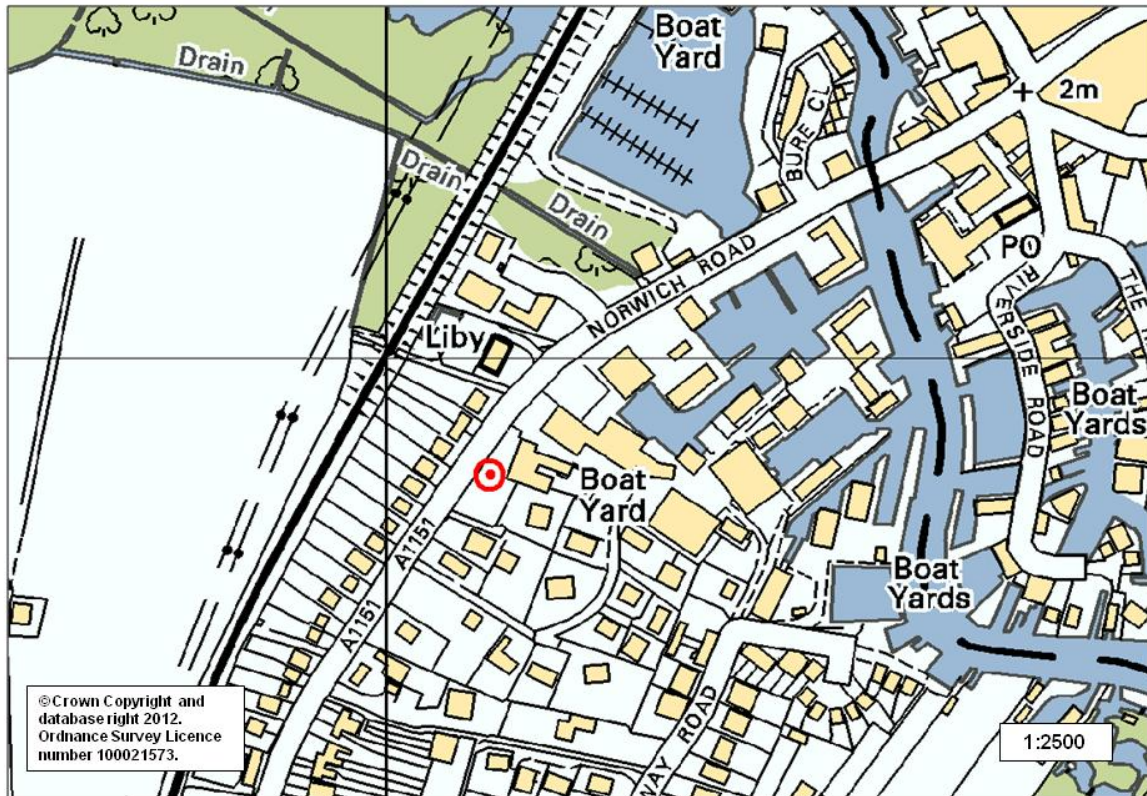


BA/2011/0041/TPO - The Grange, 2 Grange Walk, Wroxham
The tree, a mature Corsican Pine, is immediately adjacent to the Norwich Road with high public visual amenity.



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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.

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 side's 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.

"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.