

**16. CONFIRMATION OF TREE PRESERVATION ORDER, FROGGATT  
(TPO 89/2016 /DF)**

**Purpose of the report**

1. To confirm a Woodland Tree Preservation Order in the Parish of Froggatt, to which objections have been received.

**Recommendation:**

2. **1. To approve confirmation of Tree Preservation Order TPO 89/2016 (Appendices 1 and 2 attached) without modification**

**How does this contribute to our policies and legal obligations?**

3. This action is proposed in pursuance of the following policies:
  - National Park Management Plan Outcomes DL1, DL3 and TV1
  - Landscape Strategy (Derwent Valley: Slopes & Valleys with Woodland)

**Background**

4. This area of woodland comprises semi-natural mixed broadleaf within the boundary of the Froggatt Conservation Area (designated on 21 August 1998) and is therefore subject to Section 211 of the Town and Country Planning Act 1990. This requires the local authority (in this case this Authority) to be informed 6 weeks prior to tree works taking place, allowing the authority to protect individual trees or woodlands by making a Tree Preservation Order (TPO) should they feel it expedient to protect amenity.
5. A complaint was received on 25 September 2015 about the carrying out of works which involved the destruction and uprooting of a number of trees in the area using a JCB wheeled excavator, in the absence of notification under Section 211 of the Town & Country Planning Act. A site inspection confirmed that the work carried out would not have been approved or considered to be appropriate woodland management had such an application been received. Subsequent liaison with the landowner gave rise to the concern that other trees and woodland now in the same ownership may be subject to further and immediate threat. The landowner informed an officer of the Authority that he wished to take another access onto the land, which it is believed would involve further clearance. A Tree Preservation Order was therefore made on 9 March 2016 and served on the owner on 11 March 2016, under delegated authority. The TPO Schedule (including map) is attached at Appendix 1 and the Statement of Reasons at Appendix 2.

**6. Objections**

Objections were received and although not 'duly made' were within the extended time allowed, in view of the Easter break. The objections, and officer comments on each, are as follows:

7. Objection: *"I am strongly objecting to a tree order being put on to my recently purchased land at Froggatt. As all I have done is cleared very small areas where deadly razor wire has been strung around and also cleared fallen or damaged trees which were unsafe for me and my family to enjoy the land in safety. I checked with a health and safety officer which he said needs removing asap in the interest of public and animal welfare."*

Officer comment: No evidence is presented that the work was sufficiently urgent to progress prior to consulting the Authority, nor that the scale and extent of work carried out was proportionate to the risks. Whilst a TPO would require consultation of proposed works with the Authority, consent for work on legitimate health and safety grounds would not be unreasonably withheld; however it would allow the Authority to ensure such measures were reasonable and proportionate. Furthermore there is provision in the legislation to carry out urgent work prior to consultation “to the extent that such works are urgently necessary to remove an immediate risk of serious harm”.

8. Objection: *“The wood has no right of way through it, and is difficult to see only from the road which there is no footpath and the road is very dangerous to walk up as very heavy speeding traffic. Also car users do not get any pleasure from my wood as they are too busy looking forward watching traffic going at 60 plus miles per hour.”*

Officer comment: The amenity value of the woodland is set out in the Statement of Reasons at Appendix 2. In particular the site’s inclusion within the ‘Slopes and Valleys with Woodland’ Landscape Character Type within the Authority’s Landscape Strategy, and the importance of woodland referred to in the Froggatt Conservation Area Appraisal, both highlight the visual amenity value attached to the woodlands below Froggatt Edge, to which the site contributes.

9. Objection: *“I don’t wish any orders on this land as it would devalue the land I have asked my local CLA representative to visit the site and as I think also the woods rotten and suffocating itself the previous owner never visited the site for six years so the wood was unworkable as well as having razor wire strung across which I strongly suspect the neighbour may have done to try and stop the wild deer problem in the area, I have reported this to the police which they are investigating as we speak.”*

Officer comment: The making of a TPO does not preclude reasonable woodland management for amenity, economic or health and safety purposes. There is therefore no reason why a TPO should devalue the land unless the intended use was incompatible with National Park purposes.

10. Objection: *“Note 200yds further down the road the wood has been thinned and scrub cleared. Seems double standards.”*

Officer comment: The site referred to in the owner’s objection falls outside the Conservation Area, and work was done as part of sustainable woodland management on a post-industrial site.

#### **Proposal:**

11. Member approval is required to confirm an opposed TPO. In this case officers consider that the owner’s objections do not diminish the case for confirming the TPO so it is proposed to confirm Woodland Tree Preservation Order TPO 89/2016 without modification. The purpose is to safeguard the amenity value of this area of woodland, which is considered to be of sufficient value to warrant such protection.

#### **Are there any corporate implications members should be concerned about?**

12. **Financial:** No financial implications are envisaged.
13. **Risk Management:** No significant risks are envisaged in confirming the TPO. If the TPO is not confirmed it will expire on 9 September 2016. There is a risk that further work may be undertaken which would compromise the landscape and amenity value of the woodland.
14. **Sustainability:** The confirmation of a TPO would encourage sustainable woodland management.

15. **Human Rights:**

The Human Rights Act 1998 sets out the rights and freedoms of individuals, which includes a right to peaceful enjoyment of their property. The making of a Tree Preservation Order does not in itself remove this right but it does place a restriction on it by requiring an application to and approval by the Authority before carrying out certain operations (works). In doing so the Authority must balance the interests of the property owner and the wider public interest.

The purpose of confirming the Tree Preservation Order on this site would be to conserve the amenity value of this area of woodland as part of a larger area of contiguous woodland below Froggatt Edge. The impact on the owner's human rights is limited by the fact that the property is not the owner's home, that only certain specified operations require consent and the fact that, in line with the Authority's normal procedures for dealing with tree enquiries, consent would not be unreasonably withheld, as far as any proposed operations are consistent with maintaining the amenity value. Normal sustainable woodland management would not, for example, be proscribed. There is a right of appeal to the Planning Inspectorate if an application for Works were refused.

The public interest in conserving the amenity value of the woodland, as set out in the attached Statement of Reasons, is therefore considered to be significant enough to warrant the limited impact on the owner's right to peaceful enjoyment of their property.

16. **Consultees:**

The Authority's Natural Environment Team Manager, Monitoring & Enforcement Manager, Landscape Architect, Conservation Officer and Senior Legal Officer (Enforcement) have been consulted and support the proposal.

The Forestry Commission were consulted in connection with the work which has been carried out and confirmed that they have no Felling Licenses approved or pending approval for the area concerned. There is no planning permission in place that approves any Works.

17. **Background papers** (not previously published)

Proposed Tree Preservation Order: Delegated Report

**Appendices -**

Appendix 1- TPO 89/2016- Schedule of Trees

Appendix 2- TPO 89/2016- Statement of Reasons

**Report Author, Job Title and Publication Date**

Dave Frost, Tree Conservation Officer, 4 August 2016