

14. REPORT ON OBJECTION TO TPO 90/2019 – LAND BETWEEN SMITHY LANE AND CHURCH LANE, RAINOW GRID REFERENCE SJ953762 AND PROPOSAL TO MODIFY (FS)

REPORT AUTHOR: FELICITY STOUT, TREE CONSERVATION OFFICER (TCO)

1. **Proposal**

2. To confirm TPO 90/2019 in its modified form.

3. **Site and Surroundings**

4. The site is situated between Smithy Lane and Church Lane in the Parish of Rainow, grid reference SJ953762. The site includes boundary and site trees, surrounding and within a plot of land located to the east of Smithy Lane and to the west of Church Lane, Rainow. The site is bounded by the Public Right of Way (253/FP60/1) to the north and the Robin Hood Inn to the south-west.

5. The site contains a number of trees of different species (sycamore, Norway maple, oak, birch, alder, willow, holly, hazel, hawthorn, yew) that are located around the perimeter of the site, along the adjacent public footpath and in a small area of hardstanding to the east of the site. In the centre of the site, where a significant woodland group of trees was felled in February 2019, there are now new tree saplings growing, including hazel, alder, oak and sycamore. The site is located immediately adjacent to the Rainow Conservation Area.

6. The site is located within the South West Peak. This landscape has a strongly wooded character, which creates filtered views through the landscape, with woodland blocks along cloughs and slopes, which combine with scattered trees along field boundaries and tree groups around settlements (Peak District National Park Landscape Strategy and Action Plan 2009-2019).

7. The importance of hedge and boundary trees was confirmed in the latter half of the 1990s when English Nature and the Countryside Agency set about defining England's different landscape characteristics. In 38 areas (about a quarter of the countryside), hedge trees, shelterbelts and 'shaws' on the boundaries of fields were considered to be essential features of the landscape.

8. **RECOMMENDATION:**

9. **That TPO 90/2019 be confirmed in its modified form with new Modification Schedule 1 (Appendix 2) and Modification Plan (Appendix 3).**

10. **Key Issues**

11. An Area TPO (TPO 90/2019) covering all trees on and around the boundaries of the site was made on 18th June 2019. The effect is that the Order applies for six months or until confirmed or modified.
12. An objection was received by PDNPA on 29th July 2019 by Mr Barrie Draper ("the Objector").
13. The TCO made a site visit on 16th September 2019 to assess the concerns raised by the Objector.
14. The TCO recommends that in response to this objection, TPO 90/2019 is modified to become a Group Order with two groups replacing Schedule 1 with Schedule 1 attached

and retitled and the plan with the plan attached as retitled, and then is confirmed in its modified form.

15. **History**

16. A Planning Application (NP/CEC/1118/1125) was submitted for the development of this plot of land in November 2018. The proposed development was for the construction of 9 residential units, which would result in the loss of a wooded area in the middle of the site. The application was refused on 11th March 2019. During the application process, a significant number of the trees on site, making up a visible woodland group, were felled. On 11th February 2019 residents of the local community reported the felling of the woodland group in the centre of the site, but because the site is situated just outside the Rainow Conservation Area, the trees were not protected.
17. Since then, members of the local community have contacted the PDNPA in order to try to have the remaining trees on site and surrounding the site protected, as they feared more trees would be removed prior to another planning application being submitted. They enquired as to whether the Rainow Conservation Area could be extended to protect the trees or whether a Tree Preservation Order could be placed on the trees in question.
18. The interests of amenity justified the making of the Tree Preservation Order because the trees located along the site's boundaries are prominently visible from Smithy Lane, Church Lane and PROW 253/FP60/1. The trees around the boundary of the site are of moderate arboricultural value and quality and make a significant contribution to the character of the area. Some of the trees along the roadside at Smithy Lane were planted by the father of a resident of the village and are of local significance and importance. The trees are therefore considered to be of sufficient public amenity and arboricultural quality to merit protection by a tree preservation order. There is also an important expediency argument for placing a TPO on all the trees, due to the history of the site, the fear of more tree felling being undertaken and a foreseeable threat to the trees. A new planning application was submitted for this site and validated on 11 September 2019 and is currently being consulted on. Consultation closes on 25 October 2019.
19. Following a TEMPO assessment conducted by the TCO on 22nd May 2019, the subject trees scored highly for both amenity value and expediency (Forbes-Laird, TEMPO, 2009). Additionally the trees have local historic importance, some as boundary and hedgerow trees, others having been planted by a now deceased resident of the village.
20. On 18th June 2019 an Area Tree Preservation Order (TPO 90/2019) covering all the trees on site and adjacent boundary trees was created in its provisional form. The trees covered by the provisional Area TPO90/2019 include early-mature sycamore, hawthorn, holly, field maple, red oak, willow, rowan, birch and yew growing along the boundaries of the site; the TPO also covers a variety of young, natural regeneration saplings now growing in the centre of the site.
21. An objection to the TPO was submitted to the PDNPA on 29th July 2019.
22. A new planning application for the construction of no. 9 residential units on the site covered by Area TPO 90/2019 was submitted to the PDNPA and validated on Wednesday 11th September. It is under public consultation until Friday 25th October.
23. On 16th September 2019, the TCO undertook a site visit in order to assess the trees covered by TPO90/2019 and to consider the Objector's concerns.

24. **Consultations**

25. TPO90/2019 was served on site on 4th July 2019 and to the landowners and other interested parties, sent by recorded delivery on 2nd July 2019, along with information on how to submit comments and objections to the PDNPA within a 28-day consultation period, ending on 6th August.

26. **Representations and Objections**

27. One objection was received by the TCO on 29th July 2019 from Mr Barrie Draper, Arboricultural Consultant of EcoUrban Limited, 13 The Greencroft, Salisbury SP1 1JD (Appendix 1).

28. The Objector objects to TPO 90/2019 – Land at Smithy Lane and Church Lane, Rainow on the grounds that:

- an Area designation beyond temporary use would be inappropriate, as current guidance from central government advises that an ‘Area’ classification should only be used as a temporary measure until such times as the trees can be assessed properly and reclassified.
- a TPO with an area designation often creates uncertainty in the future as to which trees are covered, potentially protecting some unsuitable trees, which have limited public amenity value.

29. The Objector requests that the TPO is not confirmed in its current form.

30. **Main Policies**

31. Relevant Local Plan policies:

32. Peak District National Park Landscape Strategy and Action Plan 2009-2019.

The landscape characteristics of the site align with the landscape character type ‘Slopes and Valleys with Woodland’ of the South West Peak. The priority for this type of landscape area is to protect the mosaic and diversity of existing woodlands, boundary trees, grasslands, semi-natural landscapes and their cultural heritage components.

33. **National Planning Policy Framework**

34. The National Planning Policy Framework (NPPF) was published on 27 March 2012 and replaced a significant proportion of central government planning policy with immediate effect. The Government’s intention is that the document should be considered to be a material consideration and carry particular weight where a development plan is absent, silent or relevant policies are out of date. In the National Park the development plan comprises the East Midlands Regional Plan 2009, the Authority’s Core Strategy 2011 and saved policies in the Peak District National Park Local Plan 2001. Policies in the Development Plan provide a clear starting point consistent with the National Park’s statutory purposes for the determination of this application. It is considered that in this case there is no significant conflict between prevailing policies in the Development Plan and more recent Government guidance in the NPPF with regard to the issues that are raised.

35. **Assessment**

36. Following a site visit on 16th September 2019, I have assessed the trees on site and have considered the objection made by the Objector.

37. In light of the Objector's objection, the TCO recommends that the Area TPO 90/2019 – Land at Smithy Lane and Church Lane, Rainow is modified to a Group TPO, identifying two specific 'groups' of trees (as outlined on the modified TPO90/2019 plan (Appendix 3) and modified TPO 90/2019 Schedule (Appendix 2)). This will address the Objector's concerns regarding current government advice in relation to 'Area' designations. He and his clients will not be prejudiced by the proposed modification which will avoid uncertainty in the future by specifying groups of trees, whilst still protecting the trees surrounding the site from development pressures and preserving the character of the landscape, the local environment and its enjoyment by the public.

38. **Legal Considerations**

39. Regulation 7 of the Town and Country Planning (Tree Preservation)(England) Regulations 2012 allows for the confirmation of an Order with or without modifications.

40. The modifications proposed are to make the Order a Group Order rather than an Area Order. In fact there will be two groups of trees, as identified in the Modification Schedule 1 and the Modification Plan. This is what has been proposed by the Objector.

41. The proposed modification would have the effect of making the Order more certain as to the trees protected, and therefore more enforceable.

42. Notices detailing the order were put up at the site when the order was originally made, with information as to how to object. The Notices that were sent to the Land Registry address of the owner were returned. It is a registered proprietor's responsibility to retain his address up to date at H M Land Registry and service at the Land Registry address is good service.

43. The modified order as confirmed should again be served on the owners and site notices put up.

44. **Proposed modification**

45. That the Order, currently in the form of an area Order, be modified into a Group Order, comprising two groups, which are located in close proximity.

46. That Schedule 1 in the TPO 90/2019 (Appendix 4) be replaced with the Modification Schedule attached at Appendix 2 that sets out the numbers and types of the trees.

47. That the plan attached to the TPO 90/2019(Appendix 5) be replaced with the Modification Plan attached at Appendix 3.

48. **Conclusion**

49. **The TCO recommends that TPO 90/2019 be confirmed in its modified form with new Modification Schedule 1 (Appendix 2) and Modification Plan, (Appendix 3) and it be duly served on the owner, and site notices put up.**

50. **Human Rights**

51. The land is currently vacant. The owners may have some arrangements in place with the planning applicants or other interested parties or occupants. We have not been in touch with them. As such, any human rights issues that we can be aware of have been considered and addressed in the preparation of this report.

52. **List of Background Papers** (not previously published)

None

53. **Appendices**

Appendix 1 – Letter of Objection

Appendix 2 – TPO90/2019 Modification Schedule1, Specification of Trees

Appendix 3 - TPO90/2019 Modification Plan

Appendix 4 - Schedule 1 – Specification of Trees

Appendix 5 - TPO90/2019 Plan