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Oversight and Governance

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PLANNING COMMITTEE ADDENDUM

Thursday 16 September 2021
4.00 pm
Council House, Plymouth

Members:

Councillor R Smith, Chair

Councillor Wakeham, Vice Chair

Councillors Corvid, Cresswell, Derrick, Dr Mahony, Morris, Nicholson, Partridge, Shayer, Stevens, Stoneman and Tuffin.

Please refer to agenda item 6.2 attached.

Tracey Lee

Chief Executive

Planning Committee

6.2. TPO 537 Land at Petersfield Close **(Pages 1 - 10)**

Ward: Compton
Recommendation: To confirm TPO 537 with modifications.

ADDENDUM REPORT

Planning Committee



Item Number: 02

Site: Land at Petersfield Close, Plymouth

Objection to Tree Preservation Order no.537 Land at Petersfield Close.

Pages: 13-23

New representations received

Two new letters of representation have been received.

1. Aspect Trees Consultancy on behalf of Mr Sellick (See Appendix 1)
2. Letter from Mr Cottenham (See Appendix 2)

These representations are addressed below.

Aspect Trees Consultancy - new evidence relating to deep excavations necessary to complete development

Since the Case Officer's report was written additional information has been provided by the Aspect Tree Consultancy acting on behalf of the objector, Mr Sellick. This information is attached as Appendix 1 to this Addendum.

The following is taken from Aspect's submission, which states:-

"The plan shows (see Appendix 1 of this Addendum) that the northern edge of W2 is directly adjacent to the excavations required to achieve the ground level changes. The rear elevation of the southern plots (27 to 30) requires a retaining wall with grading beyond that. The eaves of the house will be level with the southern boundary.

The implications of this are as follows:

1. *The trees along the northern edge of W2 will have root severance to the extent that these would become unstable. The grading would require tree loss beyond its edge if structural roots are affected.*
2. *The excavations will affect the drainage of the ground and there is a risk of the trees have less water available producing drought like symptoms.*
3. *The trees will dominate the southern elevation of the houses, partly due to the height difference and partly due to the impact on light levels.*

From the attached plan it is clear that there is insufficient room for a woodland TPO without a significant impact on the residents / building and the trees themselves. If this was a proposed layout, at an application stage, I would expect Jane to raise similar concerns".

Officer response to Aspect's additional information

The information provided by Aspect (see above) relates to an extant permission for the erection of 20+ houses and the excavations would be works to enable construction. This information makes it clear that the intention is to remove all trees from the site - at least within the southern half of the site. In light of this new information, it now seems appropriate to take a more pre-cautionary approach.

The Council has statutory powers to protect trees and a duty to have regard to the protection of biodiversity. Consequently, with the uncertainty and lack of clarity in relation to the extant permissions and the approved plans, along with the Aspect Tree Consultancy submission this week, officers have re-visited the original recommendation and decided that under these circumstances a modification to the provisional TPO is not appropriate.

The initial recommendation to modify the provisional TPO has become outpaced by new material considerations. It is only right that committee review the original conclusion and recommendation in the main report and consider altering the latter to take account of the latest evidence.

Original conclusion of main report

The conclusion in the main report states:

“It is considered that the objections raised in relation to the TPO do not justify the removal of the woodland order. However, it is accepted that the area of the woodland should be modified to exclude the area affected by the installed infrastructure and extant planning permission. Although clearly reduced in size, the two strips of woodland will allow the protection of two linear sections of woodland which will provide benefits in terms of amenity, screening and wildlife habitat to the local area and protects approximately 0.2 hectares of woodland”.

Note on underground services

Guidance from utilities companies recommend that trees are not planted over services. Under normal circumstances, this is considered good practice and we would adhere to this guidance. Without a good reason, it would be considered unreasonable to do otherwise (as identified in the main report in paras 7.3-7.5).

This is, however, guidance and not a legal requirement. Furthermore, the woodland at Petersfield Close is an exceptional case due to a complex planning history that spans decades. The Council is therefore not faced with a normal set of circumstances and in light of the Aspect information, officers believe there is good reason to take a wider view of the issues. For instance:

- i. The trees on site have not been planted, they have seeded naturally over the last 50-70 years have been allowed to grow by the owner.
- ii. There will be many hundreds, if not thousands, of existing trees across the city that are over or near underground services.
- iii. Tree roots can interfere with underground services, but when this arises the utility companies have powers to fell trees if this is necessary as part of any repair or maintenance.

Officers therefore consider it is reasonable in the new circumstances to place a TPO on trees that are over or near underground utilities. The TPO does not hinder in any way any necessary works to this infrastructure

Revised conclusion

Officers believe that the last sentence in the original conclusion is no longer appropriate. Considering the evidence submitted by Aspect this week, it is considered unlikely that the area covered by the modified TPO would be sufficient to guarantee the protection of any trees on site. Therefore, even those trees within the TPO area (e.g. W2) may be lost as a result of adjacent deep excavations necessary to build the development as proposed.

Officers now believe the only way to protect at least some of the amenity provided by these trees in the long term is to confirm the TPO across the whole woodland.

This will enable the specific details of future development to be brought forward, in order to provide certainty around the proposed development, while also enabling an assessment to be made in terms of the impact on the trees present on site.

The new recommendation does not alter the established position that an extant consent can be implemented subject to compliance with any necessary outstanding approvals. But the TPO does ensure that no more trees than is necessary are lost, while ensuring that as many as possible are retained.

Revised recommendation

To confirm TPO 537 so that it applies to the whole woodland without any modifications.

Officer Response to Mr Cottenham's Letter (10/09/21)

A letter was received from Mr Cottenham at the end of last week setting out in more detail his objection to the TPO (see Appendix 2). In summary, Mr Cottenham provides further information to show that the principle of development has already been established. He also explains why he believes the imposition of the TPO would adversely affect his adjacent site.

As set out in the main report, officers accept that the principle of development on site has been established. However, the TPO does not prevent development on site.

Mr Cottenham also refers to two ecological surveys that have been done. One on his own land and the other undertaken recently to inform an application for the single plot at the western end of the woodland. He draws the conclusion from these surveys that there are no wildlife issues that need to be addressed.

Officers do not entirely agree with Mr Cottenham. The habitat on his own land is different to that of the TPO site, so the results of the survey are not directly relevant. The survey carried out for the single plot at the western end of the wood does not actually conclude there are no wildlife issues. It recommends that further surveys may be necessary to establish whether protected species (such as bats) might be affected by the proposed application.

Addendum Appendix I

Information Submitted by Aspect Trees Consultancy on behalf of owner Mr Sellick submitted a further representation on Monday 13th September; it states:-

I have been passed a set of plans from Mr Sellick with the layout and a section of the houses (see Figure I below). I have overlaid these with the TPO boundary to show what the impact of the approved dwellings will have on that area and vice versa. Obviously, it might not be 100% accurate as the plans are all on paper and I'm scaling the TPO boundary from the committee report. I have marked the plan and elevation to demonstrate, as best I can, the positions of excavations, the TPO and houses.

The plan shows that the northern edge of W2 is directly adjacent to the excavations required to achieve the ground level changes. The rear elevation of the southern plots (27 to 30) requires a retaining wall with grading beyond that. The eaves of the house will be level with the southern boundary.

The implications of this are as follows:

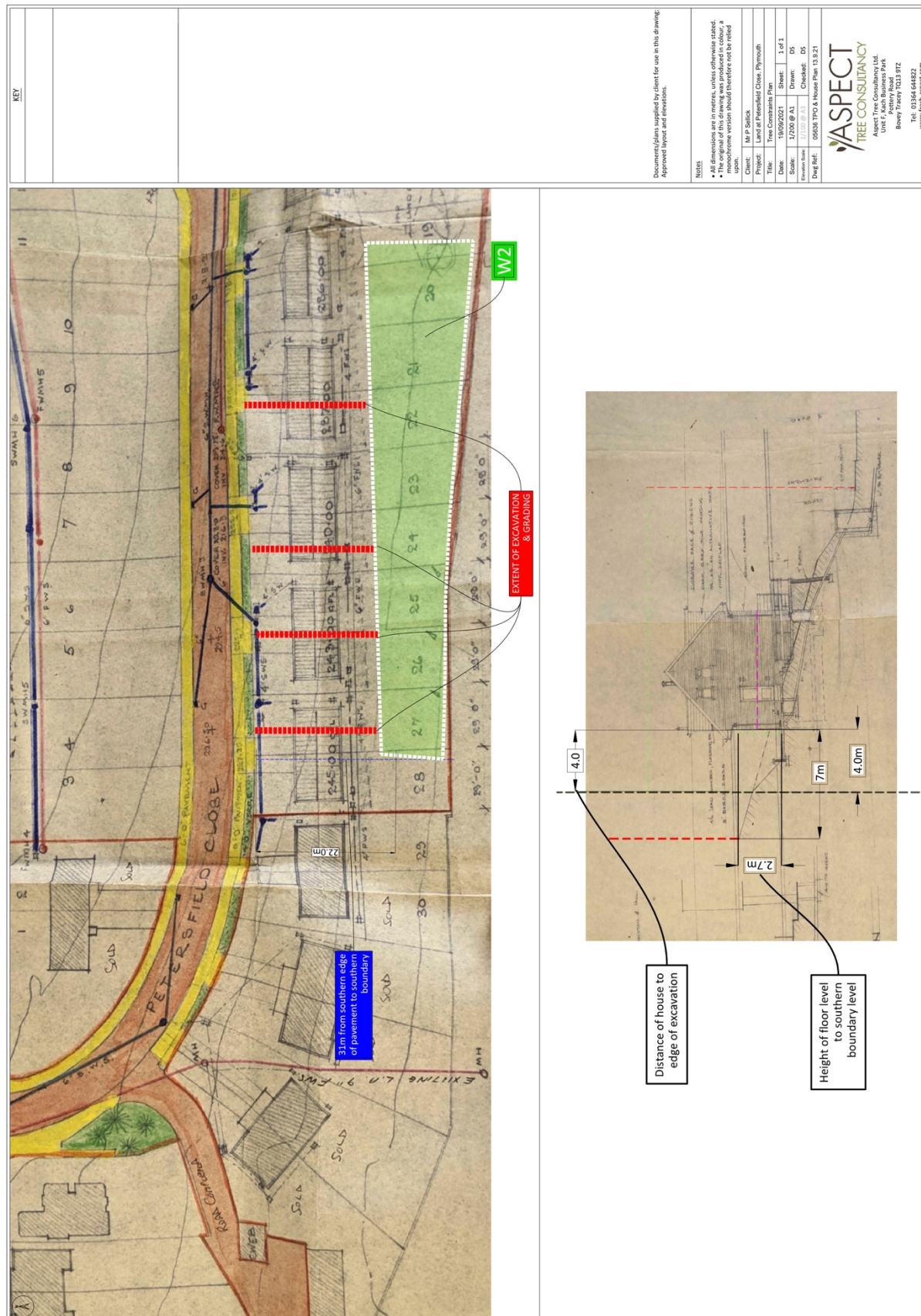
4. The trees along the northern edge of W2 will have root severance to the extent that these would become unstable. The grading would require tree loss beyond its edge if structural roots are affected.
5. The excavations will affect the drainage of the ground and there is a risk of the trees have less water available producing drought like symptoms.
6. The trees will dominate the southern elevation of the houses, partly due to the height difference and partly due to the impact on light levels.

From the attached plan it is clear that there is insufficient room for a woodland TPO without a significant impact on the residents / building and the trees themselves. If this was a proposed layout, at an application stage, I would expect Jane to raise similar concerns

I would be happy to clarify anything if needed, but if this could be included as an addendum to the committee report that would be appreciated.

Figure I Plan and elevation - TPO and House Plan 13/09/21

Submitted by Aspect Tree Consultancy on Behalf of Mr Sellick



Addendum Appendix 2**Letter from Mr Cottenham (objector and landowner adjacent to the TPO site)**

Attn Jane Turner
Natural Infrastructure Officer
Strategic Planning and Infrastructure
Plymouth City Council
Ballard House
West Hoe Road
Plymouth
PL1 3BJ

10 September 2021

Dear Jane

Regulation 5 Notice – Town & Country Planning Act 1990**Town and Country Planning (Tree Preservation) (England) Regulations 2012****Tree Preservation Order No.537 – Land at Petersfield Close, Plymouth**

I confirm receipt of the notification of Planning Committee meeting on Thursday 16th September 2021 commencing at 4.00pm.

In line with the Planning Committee rules, **I ask that this letter is presented to the committee as material for consideration** in its own right, in order to present a balanced view.

Although my land is not included in this TPO, it is adjacent to the site covered under your notice and therefore any decisions taken may or may not impact my land. It forms part of the same parcel of land and the comments I make below apply to both areas.

In addition to objections, I raised (within my letter dated 31.03.21) I would like to add the following points, which I believe to be pertinent to this matter and form the facts on which the committee (I would respectfully expect) should consider when making their decision:

1. The Council have formally recognised that the whole of the area described within the Notice (including my adjacent land) has an existing strongly established extant permission. In the absence of any other permissions, the owner of the site is permitted to build the houses on the original approved plan, with no further permissions to be sought. Indeed, established Planning Law now recognises that an extant permission, however strong, is

indeed a material planning consideration when looking at alternative development schemes.

The full weight of the extant permission legally overrides any other consideration, such as the TPO Notice served and the Council needs to be alive to any recourse against it which may occur as a result of any negligent action it may take in attempting to restrict the sites established use and extant permission.

2. I have provided you (electronically) with service plans that show the full extent to which services on the site are currently installed. These show that gas, water, electricity, hydrant mains, sewage connections and manholes are all **fully installed and adopted**. In accordance with planning law and service provider guidelines, no trees or vegetation are permitted to be within specified distances of these services or the permitted development, noted in the extant permission. Therefore, neither trees nor vegetation are acceptable on this site, under any circumstances, except for small margin boundaries of less than 3mtrs at the top and bottom (N & S) of the site which would be outside of these areas.
3. Under the Joint Local Plan, the entire plot is designated as a brown field development site and not green space. This was adopted as Policy in March 2019. The plan has not been changed since that designation. Indeed, this area was specifically readdressed when it was originally wrongly designated in the lead up to the finalisation of the recent JLP. Upon appeal the status of the land was corrected and confirmed to be a brown field development site. This is further supported by the fact that extant planning permission status is accepted by Plymouth City Council.
4. The instigation of the blanket TPO for this plot is closely linked with a recent planning application (21/01071/FUL) for a single dwelling located between the last property in Petersfield Close and the plot of land included in this TPO.

The objections raised relating to this application have, I believe lead us this point. The objectors call to re-designate this brown field as green space and environmentally protect this area. However, every one of the objections, including that from a local Member of Parliament are devoid of facts and are based on sentiments, guess work and personal preferences referring to incorrect assumptions rather than facts or indeed, planning law. There are many examples of this:

Example 1:

Reference is made (by objectors) to a biodiversity threat.

However, in fact - a survey carried out by Consultant Ecologists (Eco Logic) revealed that any development to this area represented overall a potential biodiversity gain. No animals were present or recorded as occupying the site. There would be no impact to any species and no impact to any biodiversity network. This information formed part of my own successful planning application and was accepted by the planners. It would seem unlikely that the slice of land at one end of a plot would present a totally different ecological result to land at the other end of this relatively small plot. Indeed, as further confirmation of this, at the opposite side of the TPO area, the planning application (21/01071/FUL) was recently submitted, and it included a Preliminary Ecological Appraisal. It echoes the findings of my own survey.

It was noted, however, that many residents with boundaries to the plot of land had used this area to discard their own garden, household & DIY waste, with one resident also extending their own garden deck area over their boundary and into the plot.

Example 2:

Reference is made (by objectors) to traffic concerns.

However, in fact – the site has extant approval to enable 29 further houses to be built. Should further, subsequent planning applications be made, and the number of units reduced, as happened in my own planning application, there would be a positive gain in safety. A report by the Planning Inspectorate has already considered and stated that the extant permission for houses at this site, was of such weight that despite the inadequacy of the junction between Petersfield Close and Eggbuckland Road, refusing the application on the substandard road junction carried little weight. Full road and street infrastructure (services) are already in place to service the full capacity of the extant permission.

It would seem when considering the above that the notion of redesignating the site as ‘a bio-diverse steppingstone, woodland environment’ is because both residents and the Council are again trying to stop any further development after other means of objection have been thwarted.

History and factual information clearly show that the land is a development site. The most recent planning applications and the Planning Inspectorate have recognised that the fallback position of the extant permission overrides all concerns of note by any body/department and that any concern is not a reason to warrant refusal under any circumstances.

With regards to my own plot, on the west boundary of this TPO. Referring to your correspondence dated 12 July 2021:

I can confirm that the TPO itself does not cover any of the land in your ownership but does include the area where the access across Mr Sellick's land would pass which has been cleared. I therefore appreciate why you are concerned about the impact this may have on any future planning application. Whilst the access road is currently within the provisional TPO boundary, we do have an option to modify the order to exclude certain areas.

It was fully my intention to implement permission granted to me for 4 properties (Permission No. /FUL dated 27 April 2018). Conditions within this permission stated that development should commence within 2 years (rather than the usual 3 years) in line with a PCC accelerated programme to meet its own house building target. At the time of its receipt, my Planning Consultant stated that he could not see that as adequate time to implement the permission whilst taking into account the applied conditions. One of the conditions specified that the entire road be constructed – from the end of Petersfield Close, across land which did not belong to me but provided legal access (see condition 7 on the planning approval). This would prove legally challenging, not least from a view that as we did not own the land (across which the road would be) we had no idea of how it would be developed in the future, dwelling wise.

We wrote to the Planning Officer, Amy Thompson on 11 September 2019 requesting an extension to the two-year implementation term to the then current 3-year period, allowing time to resolve the issue. No response was received. I wrote again on 18 February 2020. A reply was received the next day, more than five months after my initial letter, refusing an extension and advising that a new application would need to be made as this permission would expire on 27 April 2020.

Covid reporting was in place by March 2020.

Disappointingly, no concession was provided for the Covid restrictions then implemented by the government and this resulted in no application being made to revise any conditions through a section 73 amendment or a new application possible. The continuing pandemic impacted my own budget and financial position, therefore resulting in further delays.

With respect, this decision not to extend our planning expiry date did feel rather unfair and discriminatory as across the board, many rules & deadlines were relaxed. As a matter of fact, the

Council itself (as an example) made the following concession on its Local Green Space Development Plan Document:

We have made the decision to pause work on the DPD for the present time. This decision was taken in response to the impact of COVID-19 on the council's budget

Although reference to my own application may appear to be not directly linked with this TPO, I refer to it as a way of explaining that had the pandemic not struck, there would already be 4 detached houses built on my own plot, along with a road built through the TPO Notice area. Thus, putting a completely different view on the land and matters leading to this point in time.

Please will you confirm safe receipt of the attached and that the letter will be forwarded to the committee for material consideration.

Yours sincerely

Adrian Cottenham