

TREE PRESERVATION ORDER REPORT



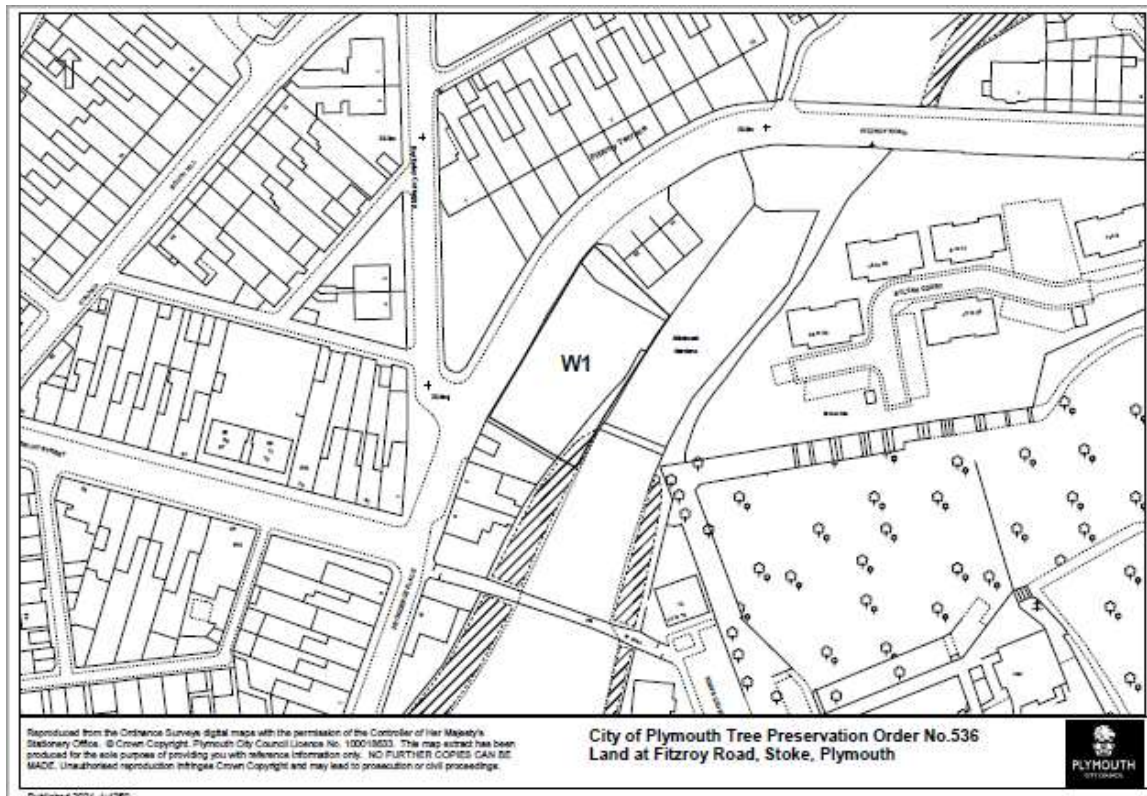
Application Number	TPO 536 Land at Fitzroy Road	Item	01
Date Valid		Ward	Stoke

Site Address	Land at Fitzroy Road, Plymouth		
Proposal	Objection to Tree Preservation Order no.536 Land at Fitzroy Road.		
Applicant			
Application Type			
Target Date		Committee Date	19/8/21
Decision Category			
Case Officer	Jane Turner		
Recommendation	To confirm TPO 536 with modifications		

Click for documents www.plymouth.gov.uk

I. Background and description of site

- I.1 Under delegated authority in March 2021 a woodland Tree Preservation Order (TPO) was placed on a small wood at the western end of a site at Fitzroy Road, Stoke, Plymouth, TPO No. 536. The making of the TPO was prompted by several matters, a request from a local resident, the refusal of planning permission for 10 houses and the submission of a Section 211 Conservation Area notice to fell two Sycamores and remove basal growth from 3 Limes.
- I.2 The wider site has recently been developed with the erection of 3 houses granted consent in 2015 (ref: 15/01699/FUL). The part of the site to which the woodland order relates is the small wood located towards the south western end which has historically been wooded in nature. The area is bounded to the northwest by Fitzroy Road, to the southeast by allotment gardens and car park, to the southwest by an existing dwelling and to the northeast by one of the 3 new houses. The site contains a number of trees including three mature Limes, Sycamores of a range of ages, Beech and newly planted native understorey species such as Field Maple and Hazel, which the owner has planted to enhance the wooded area. These trees are not currently large enough to be protected by the conservation area status of Stoke.



Tree Preservation Order No. 536 map showing location of woodland area

- 1.3 The trees are a prominent feature and make a positive contribution to the visual amenity of the local area and enhance the Conservation Area of Stoke being visible from the adjacent road. A woodland order classification has been chosen to ensure the recent new planting is allowed to mature and enhance the existing small woodland.
- 1.4 The Government guidance states when it may be expedient to make an order:-
It may be expedient to make an Order if the authority believes there is a risk of trees being felled, pruned or damaged in ways, which would have a significant impact on the amenity of the area. But it is not necessary for there to be immediate risk for there to be a need to protect trees. In some cases, the authority may believe that certain trees are at risk as a result of development pressures and may consider, where this is in the interests of amenity, that it is expedient to make an Order.
- 1.5 Since the making of the order a TPO application to fell two Sycamore and remove basal growth from 3 mature Limes was submitted. Consent was granted for the removal of the 2 Sycamores as they had defects. The part of the application to remove the basal growths on the 3 Limes was withdrawn following a discussion with the agent/applicant as these works were not considered necessary as they would reduce the Limes vigour.
- 1.6 Three separate letters of objection to the Order have been received from Mr Jon Kiely of J.K. Tree Consultancy on behalf of the owner that, despite responses from both sides, remain unresolved. In accordance with the Planning Committee's Terms of Reference this report has been prepared for the Planning Committee to decide whether or not to confirm the order, confirm the order subject to modifications or to let the order lapse.



Google aerial photo showing wooded area to south west of 3 new houses the subject of TPO 536



TPO 536 viewed from Fitzroy road taken March 2021 with Limes visible in the background



View towards the 3 new houses from within the site taken March 2021



View from within the site looking SW with 2 Limes and associated basal growth in the foreground



Photo of site in July 2021 taken from Fitzroy Road at junction with Collingwood Road



Photo taken July 2021 showing Limes within the site and their basal growth and newly planted trees in the background



View into wood from Fitzroy Road - July 2021



Photo taken from Fitzroy Road showing amenity of trees. Parking for new houses on left.

2. Pre-application enquiry

N/A

3. Relevant correspondence/history (available on request)

Tree Preservation Order No. 536

E-mail requesting Tree Preservation Order

3 Letters of objection to TPO from Jon Kiely of J.K. Tree Consultancy acting on behalf of owner Mr J Woodley

Conservation Area notification withdrawn after making TPO within 6 weeks notification period and Tree Preservation Application for work to the trees ref:21/00244/TCO

Tree Preservation Order application ref:21/00675/TPO

Objections to TPO application ref:21/00675/TPO

E mails of support for TPO.

4. Consultation responses

See below

5. Representations

Objections

Following correspondence relating to the 3 letters of objection, Mr J Kiely of JK Tree Consultancy on behalf of the owner has summarised their main issues as follows:-

- a) The reasons (as stated in correspondence) for making the TPO were not stated on the Regulation 5 Notice.
- b) The Conservation Area already protects the trees with 'amenity value'.
- c) There was no threat to the trees.
- d) The LPA did not engage with the landowner prior to making the woodland TPO.
- e) The TPO includes trees that were previously agreed for removal and therefore hinders beneficial management.
- f) A woodland TPO cannot be based on the future potential of an area to become woodland.
- g) The justification for describing the site as woodland is not based on the current condition of the area.
- h) The area does not meet the accepted definition of 'woodland'. It is too small.
- i) There is no vertical structure, ground flora or other ecological characteristics of 'woodland'. The site does not meet any of the accepted woodland classifications or descriptions.
- j) The Council's Tree Preservation Order Assessment Form states that it is for use with trees or groups of trees – it does not say use for 'woodland'. No structured assessment of the amenity value of 'woodland' has been undertaken.
- k) The TPO was deliberately made to cover recently planted trees with NO amenity value.

Support

A request for a TPO to be made on the 3 Limes was initially made by a local resident following the submission of a planning application ref:20/01235/FUL to build 10 houses in the area in question. This application was subsequently refused.

Objections to the Section 211 Conservation Area notification of the owner's intention to remove two Sycamore and prune the Limes were received from a number of local residents, and this

notification prompted the speeding up of the making of the TPO. Details of these objections can be viewed under Planning ref:21/00244/TCO

Objections to the subsequent TPO application following the serving of the order from local residents were also received many of which referred to the wooded nature of the site and the wildlife associated with it which they have enjoyed for many years. These can be viewed under application ref:21/00675/TPO

Several e-mails supporting the making of the order have also been received.

6. Relevant Policy Framework

Plymouth's Plan for Trees

Protect – We will *protect* Plymouth's special trees and woods for future generations:

- Identify existing tree cover and its condition across the city to understand the variety, number and quality of trees within Plymouth
- Maintain an updated record of the extent and make-up of Plymouth's trees and woodlands;
- Update, review and create new strategies and guidance to ensure that trees are an important element of the sustainable growth of the city;
- Use all available planning and forestry legislation and powers to safeguard Plymouth's trees.

DEV28 Trees, woodlands and hedgerows of the Joint Local Plan.

Development that would result in the loss or deterioration of the quality of:

Ancient woodland, aged or veteran trees or impact on their immediate surroundings;
Other woodlands or high amenity trees including protected trees; important hedgerows including Devon hedge banks; will not be permitted unless the need for, and benefits of, the development in that location clearly outweigh the loss and this can be demonstrated.

Development should be designed so as to avoid the loss or deterioration of woodlands, trees or hedgerows. If the loss of trees, woodlands or hedgerows, cannot be avoided, new native and locally appropriate trees and hedgerows will be secured as mitigation to ensure they contribute to a 'net gain'. Mitigation should be delivered on site, but if this is not achievable, offsite compensation will be required to provide a net gain in canopy cover in line with local standards.

7. Analysis

7.1 Below is the Natural Infrastructure Officers response to each of the reasons for objection raised:-

a) The reasons (as stated in correspondence) for making the TPO were not stated on the Regulation 5 Notice.

The Regulation 5 notice (letter sent to those served with a copy of the order giving reasons for the TPO) states that the TPO has been made 'because it is considered this small woodland has collective value and makes a positive contribution to this part of Stoke Conservation Area. The trees are visible to all those who use Fitzroy Road and who live in the local area.'

The objector states that the LPA should have given the development as a reason for making the order. The LPA agree that the recent application to develop the site was the trigger for the making of the TPO to ensure long term protection of the area and to protect newly planted trees, but the **reason** to proceed is, as stated in the Regulation 5 letter - to protect the amenity of this part of Stoke and is not therefore considered to be incorrect.

b) The Conservation Area already protects the trees with 'amenity value'.

It is acknowledged that the Conservation Area status does protect many of the trees on the site, however a Section 211 notice can be given to the LPA to remove them at any time. Planting of new young trees by the owner within the woodland has been welcomed as this had been recommended in the planning application for 3 houses on the site in 2015 to enhance the wooded area, however unfortunately a condition relating to the submitted landscape management plan was not included in the final decision and therefore could not be relied upon for long term protection. The Officer considered that the only option to ensure long term protection of the trees planted by the owner was to include them as part of the new TPO woodland order as they are too small to be protected by the Conservation Area status which only protects trees with stem diameters of over 75mm at chest height.

c) There was no threat to the trees.

Clearly the area is potentially under threat from new development as the last planning application, although refused, would have resulted in the loss of most of the trees including those planted by the owner ref: 20/01235/FUL. The Conservation Area does not give trees below 75mm stem diameter protection and Government guidance recommends that TPO's are used for long term protection. The new planting in this small woodland helps to enhance the Conservation Area setting.

d) The LPA did not engage with the landowner prior to making the woodland TPO.

Officers rarely engage with an owner before making a TPO unless they have made the request themselves. Unfortunately, from past experience where engagement has taken place, trees have been felled before an order could be made.

e) The TPO includes trees that were previously agreed for removal and therefore hinders beneficial management.

Some trees had been suggested to be removed as part of the long term management/enhancement proposals for the woodland but the Tree Management Plan relating to this was subsequently not approved as part of the 2015 Planning Consent for 3 houses.

It is accepted that not all the Sycamores are of high individual merit and we have allowed those that have significant defects to be removed. However, the remaining trees have collective value as a woodland and along with the new planting should, where possible, be retained. This point was agreed with by the applicants agent in the Arboricultural Impact Assessment report that accompanied the recent planning application 20/01235/FUL in para 3.3 of TC181203-AIA-revA:-

'As previously mentioned the (albeit poor quality) trees have a collective significance, making a positive contribution to amenity – predominantly from Fitzroy Road.'

It is not therefore considered that beneficial management is hindered by the TPO and any future management proposals to enhance the area will be considered on their own merits.

f) A woodland TPO cannot be based on the future potential of an area to become woodland.

The woodland TPO has been based on the current appraisal of the site - it is in the Council's view a small woodland. The Oxford Dictionary describes woodland as 'an area of land covered by trees'. It is a habitat where trees are the dominant plant form and canopies generally overlap.

g) The justification for describing the site as woodland is not based on the current condition of the area.

The justification for the woodland description is based on the current condition of the area and various site visits since 2015.

h) The area does not meet the accepted definition of 'woodland'. It is too small.

i) There is no vertical structure, ground flora or other ecological characteristics of 'woodland'. The site does not meet any of the accepted woodland classifications or descriptions.

The two points above relate to the woodland classification used. A woodland classification was decided to be the most appropriate to use as the small wood consists of a number of different species of tree of different ages including the planting of new native understorey trees. The Town and Country Planning Act 1990 does not define the term “woodland”, however, in *R (application of Brewer and others) v Three Rivers District Council [2007]* the judge stated:

“The Claimants are entitled to their view that a woodland order was not appropriate because the trees on the south-western half of the site were not fairly described as a woodland in their view. But whether a number of trees do or do not constitute a woodland is pre-eminently a question of fact and degree for the local planning authority to decide.”

In addition the Tree Preservation Order Government Guidance states:

“The woodland category’s purpose is to safeguard a woodland as a whole. So it follows that, while some trees may lack individual merit, all trees within a woodland that merits protection are protected and made subject to the same provisions and exemptions. In addition, trees and saplings which grow naturally or are planted within the woodland area after the Order is made are also protected by the Order.

The DEFRA Magic habitat map identifies this and the wider area to be lowland broadleaf woodland. The 1946-47 aerial map submitted by the objector states the site was not treed on this map, but this map clearly shows that there were trees present in the SW corner which is the area that has now been protected. Current aerial photos also show the closed canopy nature of this area (see aerial photo at start of report above).

The planning statement for the 2015 consent for 3 houses refers to these trees as a ‘copse’ and the Ecological Mitigation and Enhancement Strategy submitted with the 2020 refused planning application suggests the planting of ‘woodland grass mix’ in the treed area that would remain, implying this area was considered to be wooded in nature.

The Local Planning Authority are satisfied in this case that this group of trees does justify being classified as woodland for the purposes of the order.

j) The Council’s Tree Preservation Order Assessment Form states that it is for use with trees or groups of trees – it does not say use for ‘woodland’. No structured assessment of the amenity value of ‘woodland’ has been undertaken.

The Government guidance does not require a LPA to use a particular form of assessment when deciding whether or not a TPO is appropriate. Plymouth City Council uses the form as one part of the process but ultimately the decision whether or not a TPO is appropriate is based on several factors not just the assessment form. It is made based on officer experience. It is accepted that the form used is designed for groups and individual trees but it still acts as a useful reminder of the elements that need to be considered.

k) The TPO was deliberately made to cover recently planted trees with NO amenity value.

Any tree of whatever age can be protected by a TPO. Newly planted trees in a landscaping scheme for example can be protected as they will have future amenity value as they mature and the Government advises using TPO's rather than relying on planning conditions to ensure long term protection. In the same way here, the owner planted new trees to enhance the woodland and therefore it was considered wholly appropriate to ensure they were covered by the order due to their future contribution to the structure and diversity of the woodland. In turn this makes a positive contribution to the amenity and enhancement of Stoke Conservation area.

Area of agreement

Since the making of the order the owner has now defined garden areas approved in the 2015 planning application following enforcement action by colleagues. It is agreed that it is not appropriate to include the recently created gardens in the woodland area of the TPO and the boundary should be

modified accordingly to ensure it reflects the actual land ownership boundary and only covers the wooded area and not the gardens.

7.2 There are several options available to the Planning Committee:-

- i) To revoke the order – this would result in potential loss of further trees going forward as the owner would only be required to give 6 weeks' notice of their intention to remove them before proceeding.
- ii) To confirm the provisional order without modifications – this is considered unreasonable in light of the gardens now installed within the woodland area.
- iii) To confirm the provisional order subject to modifications to the boundary of woodland area to exclude garden areas – this is recommended.

7.3 A TPO does not prevent the sensible management of a woodland and is not an onerous process. It gives the Council control over what works are carried out. It is acknowledged that some modifications to the boundary of the woodland order should be considered in light of the recent garden creation on the site and to correct any inaccuracies of land ownership and these are summarised in the recommendation below. However, it is not accepted that this and the other matters raised justify the removal of the order from this woodland.

8. Human Rights

Human Rights Act - The development has been assessed against the provisions of the Human Rights Act, and in particular Article 1 of the First Protocol and Article 8 of the Act itself. This Act gives further effect to the rights included in the European Convention on Human Rights. In arriving at this recommendation, due regard has been given to the applicant's reasonable development rights and expectations which have been balanced and weighed against the wider community interests, as expressed through third party interests / the Development Plan and Central Government Guidance.

9. Local Finance Considerations

There are no additional financial costs arising from the imposition and administration of the Order that are not included in existing budgets.

10. Equalities and Diversities

This application has had due regard to Section 149 of the Equality Act with regard to the Public Sector Equality Duty and has concluded that the application does not cause discrimination on the grounds of gender, race and disability.

11. Conclusions

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 amended to accurately reflect land ownership and to exclude the gardens recently defined. Modifications are therefore required before the order is confirmed which are detailed in the recommendation below.

12. Recommendation

To confirm TPO 536 with the following modifications:

- To reduce the size of the woodland area to accurately reflect land ownership and to exclude the gardens of the new properties to the NE.

