

TREE PRESERVATION ORDER REPORT



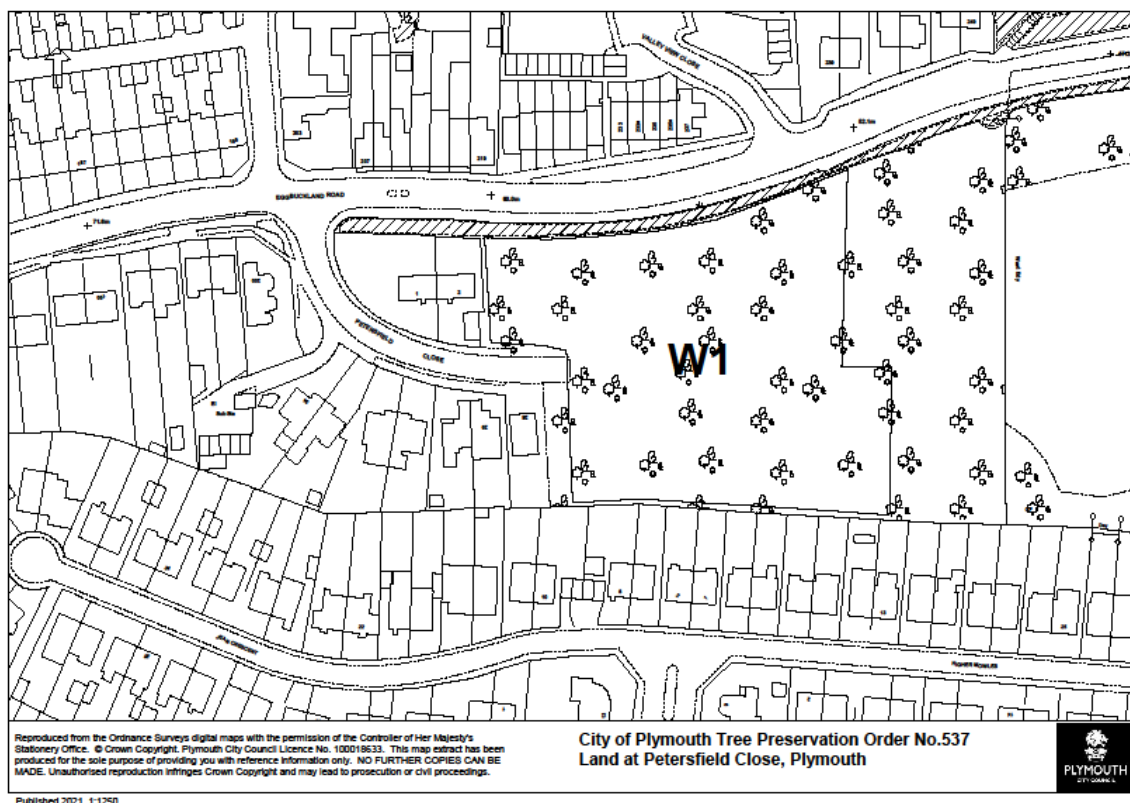
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|---------------------------|--|-------------|----------------|
| Application Number | TPO 537 Land at Petersfield Close | Item | 02 |
| Date Valid | | Ward | Compton |

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|--------------------------|---|-----------------------|----------------|
| Site Address | Land at Petersfield Close, Plymouth | | |
| Proposal | Objection to Tree Preservation Order no.537 Land at Petersfield Close. | | |
| Applicant | | | |
| Application Type | | | |
| Target Date | | Committee Date | 16/9/21 |
| Decision Category | | | |
| Case Officer | Jane Turner/Mike Oxford | | |
| Recommendation | To confirm TPO 537 with modifications | | |

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I. Background and description of site

- I.1 Under delegated authority in March 2021 a woodland Tree Preservation Order (TPO) was placed on an area of woodland at the eastern end of Petersfield Close, Plymouth, TPO No. 537. The making of a TPO was initially considered following the clearance of adjacent land to the east in 2017. More recent planning applications have resulted in further concerns being raised by local residents about the future of the land which prompted the making of this provisional order.
- I.2 The site is unusual in that it has an historic extant planning consent for housing that appears, at least in part, capable of being implemented. Part of the estate was built and the infrastructure for the whole estate was installed (gas, electric, foul and surface water). Since the early 1970's no further work has taken place on the site, initially, as we understand it, due to a downturn in the economy, but it has remained undeveloped since then and has evolved over this time into a woodland with several species of trees including Oak, Ash, Sycamore, Hazel and Hawthorn present of varying ages. The area is bounded to the north by Eggbuckland Road, to the east by a cleared site which leads to a Council owned field, to the south by housing and to the west by housing in Petersfield Close.



Tree Preservation Order No. 537 map showing location of woodland area

- 1.3 The site, with the exception of the cleared access track, is densely treed and the trees are a prominent feature of this side of the valley visible over a wide area and from Egguckland Road, Higher Mowles and Jean Crescent. A woodland order classification has been chosen to ensure any natural regeneration is also protected in the future.
- 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 Officers were aware that there was an extant planning consent on the woodland area but, after taking legal advice, considered that the making of the order would still be justified. Even though the owner could in theory complete their consent at any time, the presence of the TPO would only allow them to remove the trees that were necessary to implement their consent (as planning permission overrides a TPO) but not any other trees.
- 1.6 Since the making of the order further details relating to the extant planning permission have come to light including details of the location of infrastructure for the whole estate that were installed (gas, electric, foul and surface water) following submissions of documents from the owner and the owner of the adjacent land.

- I.7 Two letters of objection have been received, one from Aspect Tree Consultancy on behalf of the owner Mr Sellick and another from the owner of the adjacent land to the east, Mr Cottenham, which has an expired planning consent for 4 dwellings. Despite responses from both sides, the objections remain unresolved. Therefore, in accordance with the Planning Committees 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 in red TPO 537



Photo taken from inside the wood



Photo taken from current end of Petersfield Close looking east into the site along line of cleared access



Photo of trees adjacent to Egguckland Road looking east



Photo showing cleared access road area from within the site



Photo of trees on the northern slope



View of wood from Jean Crescent

2. Pre-application enquiry

N/A

3. Relevant correspondence/history

Tree Preservation Order No. 537

E-mail/petition supporting the making of the Tree Preservation Order

2 Letters of objection to TPO

-Aspect Tree Consultancy on behalf of Mr Sellick

-Mr Cottenham owner of land to east of the TPO

Planning history

4. Consultation responses

See below

5. Representations

Objections

Aspect Trees Consultancy on behalf of owner Mr Sellick raises the following objections:-

- a) The site has the benefit of an extant planning permission for residential use. Foundations and services were installed on the site, to action this permission, many years ago. This has been acknowledged by the Council.
- b) The order uses a Woodland designation but WI is not classified as woodland by Natural England. The Council does not have powers to change the use of land via the TPO system, therefore, the TPO goes beyond the scope of the Council's powers

Mr Cottenhams objection to the TPO on the land adjacent to the area he owns can be summarised as follows:-

- a) The presence of the TPO on the adjacent land and access track may preclude or hinder any planning application being renewed and may prevent permission being renewed.
- b) Need to establish that my area of land and the access to it will not form part of any order.
- c) A significant amount of household waste has been deposited into the woodland from residents in Higher Mowles and Jean Crescent.

Support

An e mail and petition detailing the reasons why residents support the TPO signed by 40 local residents has been submitted which can be summarised as follows:-

- Biodiversity – the site hosts a range of mature trees, vegetation and wildlife such as bats, birds, amphibians, reptiles and mammals. Corridor for bats.
- Amenity – the trees provide amenity at street level complimenting dense residential surroundings and positive landscape feature.
- Responsible climate change action – Government policy requires Local Authorities to meet the requirements of the natural environment and the JLP DEV27 protects areas of greenspace in the City. We understand the status of the land is currently brownfield and the JLP cannot be changed until it is up for review.
- Potential impact on local neighbourhoods – residents are aware of the benefits of living close to woodland and are also concerned about impact of water runoff and flooding if trees are removed.

6. Relevant Policy Framework

National Planning Policy Framework (NPPF) revised July 2021

Paragraph 131 "planning policies and decisions should ensure that new streets are tree-lined, that opportunities are taken to incorporate trees elsewhere in developments (such as parks and community orchards), that appropriate measures are in place to secure the long-term maintenance of newly-planted trees, and that existing trees are retained wherever possible".

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 hedgebanks; 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.

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.

7. Analysis

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

a) Extant Planning

It is acknowledged that the owner received letters from officers in Plymouth City Council Planning Department in 1995 and 2018 stating that the site has extant planning permission for housing that is capable of being implemented.

What is not clear at present is how development would be implemented so as to be compliant with current planning legislation and policies and particularly with legislation protecting wildlife eg: bird and bats. Without adequate wildlife surveys and appropriate mitigation being agreed in advance of implementation, if trees are felled outside of the modified TPO boundaries, criminal offences may be committed under the Wildlife and Countryside Act 1981 and the Habitat Regulations 2017.

b) Woodland Designation

The Council is satisfied that the majority of the area covered by the woodland designation is clearly woodland. It consists of a range of naturally established trees of different ages and species such as Oak, Sycamore, Ash, Hawthorn and Hazel. The Council acknowledges that the access track is not treed and there is evidence of services along the track (man hole cover).

The Council are not attempting to formally change the use of land by way of a TPO, they are simply using most appropriate classification described in the Government Guidance on Tree Preservation Orders and trees in conservation areas. It is legally not possible to change the use of land by way of a TPO. 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."

The decision of a LPA to characterise an area as woodland for a TPO would have to be totally unreasonable in the circumstances of the case, as the judge stated "Wednesbury perverse".

We therefore consider that even if the woodland order is modified to a smaller area eg: excluding the infrastructure, access road/detailed approved housing area, the classification as woodland is still appropriate.

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 habitat map identifies this and the wider area to be lowland broadleaf woodland.

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.

Mr Cottenham

a) The TPO may preclude planning permission on my land being renewed

This concern is understood. However, having met with Mr Cottenham and responded to his correspondence he has been reassured that the TPO does not cover any of the land in his ownership and the access track across Mr Sellick’s land is probably not appropriate to include in the order and the TPO could be modified to exclude the track.

b) Need to establish that my area of land and the access to it will not form part of any order.

It has been confirmed that the Woodland TPO does not cover Mr Cottenham’s land, it is adjacent to it.

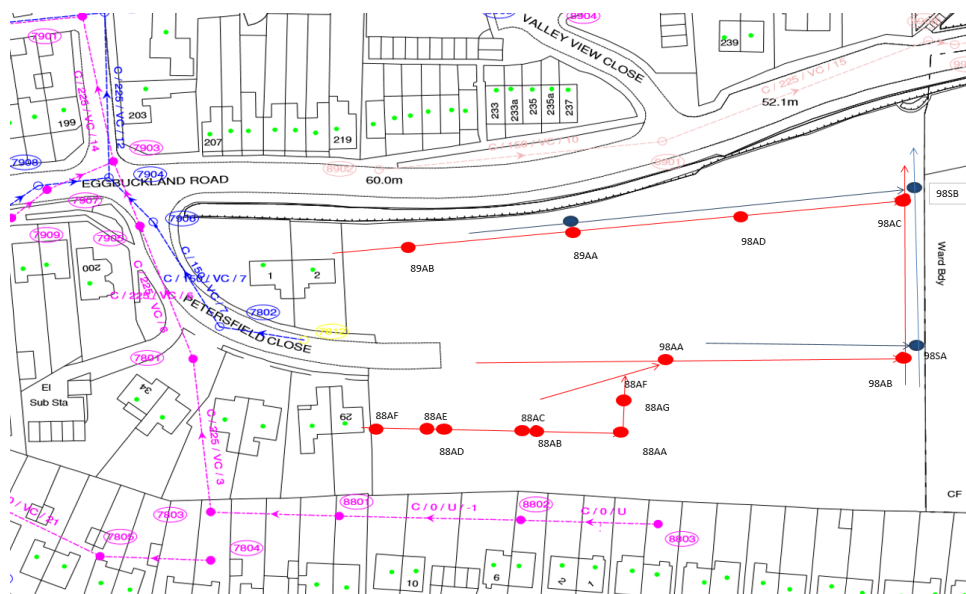
c) Dumping of domestic waste in woodland by residents

Sadly, it is acknowledged that fly tipping does sometimes occur on such areas of land located to the rear of residential properties. However, this lies outside of the scope of the matters relating to the TPO.

7.2 Area of agreement

Trees that would prevent the completion of the extant planning consent can be felled and removed as the extant planning permission overrides a Tree Preservation Order. However, trees that are not required to be removed to implement the consent cannot be removed without the required Tree Preservation Order application. Compliance with other regulations would still be required such as the Wildlife and Countryside Act 1981 and 2017 Habitat Regulations.

Mr Cottenham's record of foul and surface pipes located on site 2017 by Glanville Environmental Construction and Civil Engineers.



It is acknowledged that it is not appropriate to protect trees that are growing above or within a certain distance of services such as foul and surface water pipes. South West Water (SWW) guidance states that that no new trees/shrubs should be planted within anything from 2m -7m either side of a pipeline depending on the type of tree planted. Existing trees, as in this case, can be removed by SWW if they need access to repair or replace their pipeline. Officers were not aware of the location of these services when the order was first made.

7.4 In light of the information relating to existing infrastructure on site it is acknowledged that the extent of the woodland order should be modified, however the remainder of the trees can still be monitored and kept under review.

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

- i) To revoke the order – this would likely result in the total loss of trees in this area.
- ii) To confirm the provisional order without modifications – this is considered unreasonable in light of the details of the infrastructure that have come to light and extant planning history.

Tree preservation orders should not be made where they may have an impact on existing infrastructure or structures. It is not therefore appropriate to protect trees that are growing above or within a certain distance of services such as foul and surface water pipes. Officers were not aware of the actual location of these services when the order was first made.

- iii) To confirm the provisional order subject to modifications to the boundary of woodland area to exclude areas of infrastructure and extant planning permission. This will protect two strips of woodland to the north and south – this is recommended.

7.6 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 significant modifications to the boundary of the woodland order should be considered in light of the complex planning history and installed infrastructure of the site. However, it is not accepted that this and the other matters raised justify the complete 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 planning 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 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. Modifications are therefore recommended if the order is to be confirmed which are detailed in the recommendation below.

12. Recommendation

To confirm TPO 537 with the following modifications:

- To reduce the size of the woodland area to exclude the area affected by the installed infrastructure and extant planning permission and to create two smaller strips of woodland (W1 and W2) located to the rear of Jean Crescent/Higher Mowles and along Egguckland Road respectively.

