

BROMSGROVE DISTRICT COUNCIL

**PLANNING
COMMITTEE**

9th January 2017

**TREE PRESERVATION ORDER (No.13) 2016 – Trees on land adjacent to 73
Linthurst Newtown, Blackwell**

Relevant Portfolio Holder	Kit Taylor
Portfolio Holder Consulted	No
Relevant Head of Service	Head of Planning Services and Housing
Ward(s) Affected	Linthurst
Ward Councillor(s) Consulted	No
Non-Key Decision	

1. SUMMARY OF PROPOSALS

- 1.1 The Committee is asked to consider the confirmation with modifications of Tree Preservation Order (No.13) 2016 relating to trees and woodland on land adjacent to 73 Linthurst Newtown, Blackwell.

2. RECOMMENDATIONS

- 2.1 **It is recommended that Tree Preservation Order (No.13) 2016 relating to trees and woodland on land adjacent to 73 Linthurst Newtown, Blackwell is Confirmed with modifications.**

3. KEY ISSUES

Financial Implications

- 3.1 There are no financial implications relating to the confirmation of the TPO.

Legal Implications

- 3.3 Town and Country Planning (Tree Preservation) (England) Regulations 2012 covers this procedure.

Service / Operational Implications

Background

- 3.4 The TPO was made in Provisional form on the 3rd August 2016 to protect the trees and woodland from being felled. Concerns had been raised the previous week by local residents who had contacted the Council's Senior Tree Officer – Mr Gavin Boyes who had investigated and been informed that only works to improve the driveway and field access immediately on the road frontage of the land were being done. Mr Boyes report is included as Appendix A.

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- 3.5 The following week, on the morning of Wednesday 3rd August, the Tree Section received further calls from nearby residents reporting that heavy machinery was at work, chainsaws could be heard and that trees were being felled further into the land to the rear of the garden of 73 Linthurst Newtown. As these works did not match the information that had been given previously regarding works to the drive and field entrance, further desktop investigation was carried out.
- 3.6 The owner of the land was found to be a property development company called Freefield Investments Ltd. who are understood to specialise in acquisition of land and then onward sale once outline planning permission has been granted. The desktop investigation revealed some evidence of previous pre-emptive clearance of land by Freefield Investments in other areas.
- 3.7 Members may be aware of cases elsewhere in the District in recent months where pre-emptive clearance of land and destruction of trees, woodland and wildlife habitat has been carried out in advance of planning applications thus preventing their consideration as part of the planning process. and
- 3.8 As the land was designated Green Belt, any clearance of land seemed unnecessary and premature as there appeared to be no prospect of any planning permission being granted while this designation remained in force. However, further investigation also revealed that the site is currently under consideration for future removal from the Green Belt as part of the Strategic Housing Land Availability Assessment (SHLAA) process being undertaken by the Council's Strategic Planning section.
- 3.9 From resident's reports, aerial pictures and other online sources, the site appeared to be heavily and predominantly covered by trees. In light of the information obtained at that point, there was reason to believe that the works going on were an imminent threat to the trees and woodland and as such it was expedient to put a woodland Tree Preservation Order in place as soon as possible. The Order was duly made and served on site later the same day with postal copies sent to the site owner and adjacent residents by recorded delivery. A copy of the provisional TPO is attached at Appendix B.

4.0 Representations received

5 communications in objection to the TPO have been submitted by or on behalf of Freefield Investments Ltd. These are included as Appendix C with the key points listed in the covering table.

61 letters or emails in support of the TPO have been sent in by nearby residents of Blackwell. A summary of these are included as Appendix D with the key points listed in the covering table.

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5 Objections submitted by or on behalf of Freefield Investments Ltd.

- Letter dated 8th August 2016 from Freefield Investments Ltd.
- Letter dated 5th September 2016 from Grove Tompkins Bosworth Solicitors

Both these communications were responded to in respect of procedural matters on 9th Sept in a letter from the Council's Senior Solicitor – Mrs Sarah Sellers - and this response is included as Appendix E.

The normal deadline for receipt of representations is 28 days from the making of the Order - in this case - 5th September as stated on the cover notice of the TPO (included as Appendix B). Although only the above letters had been received by this date, the Council's Tree Officer had already met the owners' Arboricultural Consultant – Mr A Warren on site on 10th August to view and discuss the trees and the TPO. Given this meeting and the personal circumstances of Mr Warren, an extension of time to 30th September was granted for this report to be submitted.

- Report dated 30th September 2016 from A Warren of Cotswold Wildlife Services.

Two additional reports from other Arboricultural Consultants instructed on behalf of Freefield Investments Ltd. were also received on 30th September. The formal deadline for submission of representations had passed on 5th Sept. Having been submitted so late after the deadline, the Council is under no obligation under the Regulations to consider these late reports. However, given the large number of communications received in support of the TPO, it is considered an appropriate and fair balance to consider these also.

- Report dated 28th September from Barton Hyett Arboricultural Consultants.
- Addendum Report dated 30th September from Jerry Ross Arboricultural Consultancy

All of these objections generally include similar points and so these are addressed collectively as follows:

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5.1 Making and Service of TPO

- As works were currently taking place on the site on Wednesday 3rd August, it was expedient to serve a copy of the TPO immediately on site at 2pm on the day that it was made. This was by Andrew Bucklitch, Tree Officer, accompanied by Paul Hurlstone, Environmental Enforcement Officer. The workmen on site were informed of the TPO and given a copy. When they asked if they could continue working on the site, they were advised that as the TPO covered trees of any size or species, to do so may put them in breach of the TPO should their works cause damage to trees or their root systems.
- Mr Bucklitch and Mr Hurlstone offered to come onto the site to advise as to what work might still continue without risk of breaching the TPO and to confirm precisely what works had been carried out prior to the making of the TPO to avoid any later accusations of unauthorised works. This offer was rejected and the officers were refused entry to the site. The workmen were notified that a power to enter the site could be obtained if necessary and that this would be enforceable by the Police if refused again. Adjacent residents subsequently allowed access to their properties and so it was possible to observe and record the site satisfactorily to confirm what works had already been done prior to the making of the TPO without using these powers.
- The cover notice to the TPO granted all those with an interest to submit any representations by 5th September 2016. The Tree Officer was contacted by the owner's Arboriculturalist - Mr A Warren - on 5th August and they met on site on the following Monday 8th August to view and discuss the trees and woodland so that a report could then be sent in by the deadline date.
- By the deadline of 5th September, only the letter from Freefield Investments Ltd (Ref 0-1) and that from Grove Tompkins Bosworth solicitors (Ref 0-2) had been received. However, as a large number of letters in support had been received by this point, the Council were happy to allow a discretionary extension of time for Mr Warren's report to be submitted.

5.2 Extent of provisional TPO and Woodland designation

- The schedule included in the TPO, specifies that the Order covers all trees within the continuous black line on the plan. The thickness of the line is not therefore relevant – only that the inside edge of the line is sufficiently clear and accurate to identify which trees are protected.
- While the trunks of trees in the garden of 73 Linthurst Newtown are not located within the prospective SHLAA site itself, the roots and branches of the trees growing close to the boundary do extend over the boundary into the site and so could be exposed to damage. The land on the north-east boundary of 73 Linthurst Newtown includes a belt of trees and so this was included in the

provisional Order so these could be protected in the event of any works on the adjacent site.

- Nevertheless, since the TPO was made, it has become known that the property and garden of 73 Linthurst Newtown is also in the control of the objector and so the trees on that site are under the same threat as those on the adjacent land. This was regrettably but clearly demonstrated by the felling of a number of unprotected trees just inside the western boundary of the garden shortly after it was made.
- The judgement in the Evans v Waverley case determined it to be inappropriate for a TPO to be 'upgraded' at confirmation to include any trees that had not been previously covered by the provisional Order. A Woodland classification is the highest category of TPO cover as it includes not just trees present at the time of making but also any which grow or are planted subsequently. As at least part of the site appeared to be woodland at the time of making and works were already taking place, it was considered appropriate as a matter of expediency to specify the whole Order as a Woodland designation in the first instance. Where deemed appropriate, trees, groups or areas can then be reclassified into Woodland, Area, Group or Individual tree classifications once they have been considered further.

5.3 Definition of Woodland

- In the UK, woodland is defined by the Forestry Commission and the UK Government in the UK Forestry Standard and national Forestry Statistics as the following:

'land under stands of trees with a canopy cover of at least 20%, including integral open space. There is no minimum height for trees to form a woodland at maturity, so the definition includes woodland scrub'
- Appendices F and G show aerial views of the site in 2013 and 2003 respectively and show the extent of canopy cover present at those times. Since the 2013 view, some trees have been felled by Freefield Investments on the areas immediately fronting the road on either side of 73 Linthurst Newtown but the canopy cover is otherwise little changed from this view or even increased as tree canopies have grown and spread over the subsequent years. The 2003 view, though less clear, shows the level of canopy cover at the time that Freefield Investments is understood to have purchased the property.
- The Barton Hyett report has included a 1945 aerial view of the area but has incorrectly highlighted the location. The actual site can be seen just to the south-east. Despite the poor clarity of this view, two large groups and several scattered trees can be seen. These appear to be the same group of large broadleaves and the orchard trees that are still present today. Since then, through a combination of what appears to be deliberate tree planting on the western side of the site and

natural seeding and colonisation elsewhere, the rest of the site has gradually developed into the level of woodland cover to be seen today.

- Even though some trees have been removed since 2013, the level of canopy cover can still be seen to exceed 20% of the site. In the region of 70-80% would now seem to be a realistic estimate of canopy cover. At the time of purchase in 2003, although the canopy spread of individual trees would have been less, more trees were present and so the overall percentage of canopy cover will have been little different from that seen now. The whole site would therefore appear to have been well within the definition of woodland at that time.
- Looking more closely at the trees within the site, these now comprise a wide range of predominantly native broadleaf species and a highly varied age structure. The group of large mature trees in the centre of the site are primarily comprised of Beech, Maple and Ash with Laurel and Holly understorey. An equally large section to the north contains the large old Apple trees which formed the old orchard with self-set species such as Ash, Willow and Elder growing up in between the old fruit trees. Further west from this is comprised of 30-40 year old Oak, Ash and Willow with a few large older Poplar trees above. Nearer the front of the property is more scattered areas of mostly Ash, Hawthorn and Bramble.

5.4 Woodland TEMPO assessment

- The Council does currently use the standard TEMPO assessment method for considering the amenity value of trees. However, the woodland variant is not something which we have seen previously or have used before. On researching this system, we could find no evidence of its use elsewhere and it even appears to be no longer promoted by its author.
- On studying the method and criteria, the reasons for this apparent lack of support and use would appear to be the limited choice of factors that are included. Some of these would not appear relevant to the amenity value of the woodland while others are somewhat difficult to apply given the complexity and variation between different woodlands. Nevertheless, each factor and the score claimed for it can be considered:

Condition

- The objection has claimed a score of 8 – ‘unmanaged-poor condition’ for this factor. However, as most of the woodland is comprised of relatively young trees with a fairly open canopy cover as can be seen in the aerial view in Appendix F, the lack of management has not yet caused the canopy to close up such that only a few dominant species remain. Consequently, the definition of ‘unmanaged – good/fair condition’ with a score of 10 would appear more suitable at this time.

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Naturalness

- The objection has claimed a score of 1 – ‘Pioneer dominant’ for this factor. The woodland comprises mature trees of Beech, Ash, Poplar, Willow, Maple and Apple with secondary growth of Oak, Willow, Hawthorn, Holly, Ash, Field Maple, and Birch of between 20 – 40 years old and an understorey layer of Hawthorn, Elder and Hazel. The apple trees are the remains of an old orchard. No individual species is particularly dominant and so this does not match the definition given for ‘Pioneer dominant’. Age range varies considerably as does the diversity of species mix, canopy density and height such that even without significant management, biodiversity value would be expected to increase considerably for some decades. Overall the woodland more closely matches the definition given for ‘Recent semi-natural with a score of 8 points.

Size

- The woodland covers approx. 1.5 hectares so clearly falls within the ‘suitable’ category scoring just 2 points. However, it is unclear from the W-TEMPO guidance how the size is in any way relevant to the amenity value of the woodland. Arguably, as a smaller block of woodland connected to other small blocks of woodland and hedgerows across the area, this is a characteristic feature of this landscape with a higher biodiversity value than the same area within a larger wood because of the higher light levels and species diversity that has resulted.

Cultural Factors

- The objection has not given any score for this factor, having argued that insufficient points have been reached in the categories above. However, as the total at this point would more correctly appear to have reached 20 points it is appropriate to consider this factor also. In this case, the most suitable match to the nature of the woodland from the guidance would appear to be the ‘Identifiable habitat value’ definition giving this a score of 5 points although further study of the woodland ecology may increase this score.

Expediency assessment

- The felling of trees carried out on site before and after the making of the TPO, the history of the landowner and the aggressive response to the making of the provisional TPO all strongly support the assessment that without the protection of a TPO, an immediate threat to the trees and woodland on the site exists and the maximum score of 5 is merited.

Conclusion on Woodland TEMPO assessment

- Overall, despite the deficiencies in this system, it is considered that when measured against the guidance given, the woodland has achieved a total of 30 points and so definitely merits a TPO.

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5.5 - Strategic Housing Land Availability Assessment (SHLAA)

- The report from Barton Hyett Consultants, has argued that the Council have already classed the land as 'agricultural scrubland' rather than woodland.
- The Council's Strategic Planning Manager – Mike Dunphy - was consulted in respect of this and has commented as follows:

'The SHLAA is a tool used in planning to assess the likely land supply the district has, it is not a detailed site assessment process. The inclusion of a site in the SHLAA is based on information assessed by officers and also submitted by land owners/promoters.

In this instance, the original form submitted to support this site claimed the land to be agricultural, but clearly officers felt this was not the correct description for the site and the 'scrubland' characteristic was subsequently added into the final assessment of the site. The high level assessment required for the SHLAA cannot assess the full detail of the site especially if access to or views of the site is restricted.

In this instance, the more detailed assessment of the trees that has now taken place may well lead to a review of the sites current categorisation in the SHLAA. This is entirely normal and is part of the annual review process that the SHLAA is subjected to reassess sites if more evidence is presented.'

- There is no evidence of any current or recent agricultural activity on the land and the last known activity that might be considered agricultural was the use as a mink farm which is understood to have ceased in in the 1970's. The comments from Mr Dunphy make it clear that the owner's description of the land as agricultural was already considered incorrect at the time of the initial SHLAA assessment.

6 – Letters of support from residents of Blackwell.

- A total of 61 letter and emails in support of the Preservation Order have been received from nearby residents of Blackwell. These are included in Appendix D with the main points of each summarized in the covering table.
- While there is a strong theme of opposition to any proposed housing development and associated issues such as increased traffic in the submitted comments, this is a matter for later consideration as part of the SHLAA process and any subsequent planning applications or appeals.
- However, it is clear from the representations received that the trees and woodland on the site are considered by many local residents to have considerable personal amenity value by providing a home to wildlife, acting as a screen to noise and pollution from the M42 motorway, and helping to alleviate flooding.

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6.1 Wildlife Value

- No detailed information or ecological survey/study has yet been made on the site but the wide range of habitat types from both mature and young woodland, hedgerow and grassland/scrub areas together with dark wet areas and dry sunlit bracken and bramble patches combine to give a mosaic of suitable conditions for a wide range of wildlife including protected and Red list species. The continued protection of the TPO will help protect these habitats pending any further investigation of the wildlife value.

6.2 Screening the M42

- This area of woodland forms part of a belt of trees and woods running along the northern edge of the residential area of Blackwell village. Approx. 200m further to the north, the M42 runs East-West. The location, density and size diversity of the wood together with the topography of the land consequently make this an effective acoustic screen for motorway noise. The trees will already be absorbing large amounts of particulate air pollution and toxic compounds produced by the motorway traffic. As the trees continue to grow larger this effect and benefit will increase.

6.3 Flood alleviation

- Trees, and particularly areas of woodland, play a significant role in countering flooding by both preventing or slowing rainfall from reaching the ground by upto 45%. Thereafter, the more open, organic-rich structure of woodland soil can absorb and hold large amounts of water and reduce the impact of the sudden heavy downpours that are becoming increasingly common.
- The soils of the Blackwell area are predominantly of a sandy nature and so prone to rapid throughput of rainwater into local watercourses contributing to the sort of flooding events seen in recent years. While the precise flood alleviation benefit provided by this woodland has not yet been quantified, this will still be more significant than any other land use in the local area.

7 – Conclusion and Recommendations

- While the whole site can be classified as woodland under the UKFS criteria, it is evident that the two areas at the frontage of the site on either side of 73 Linthurst Newtown are predominantly grassland or covered with low ruderal vegetation. Consequently, it is not considered reasonable to designate these as woodland for long-term protection under a TPO. However, a number of individual trees and groups around the edges of these areas are of merit and would be at risk from future use or development of the site. The individual TEMPO assessment for these trees is included as Appendix H.
- To the north of these areas, the area to the north-west of the overhead power lines is almost entirely tree canopy covered. Within this are two small clear areas and the remains of the derelict timber shed of the old

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mink farm. While not yet entirely tree covered, the two clearer areas are becoming steadily more overgrown with woodland shrub species and provide species diversity and improved woodland edge habitat value to the woodland as a whole. The old timber mink farm building is already overshadowed by existing trees and in a condition beyond viable re-use.

- It is therefore recommended that the TPO is confirmed with the amendments detailed in the revised Plan and Schedule shown in Appendices I and J.

8.0 Policy Implications- None

HR Implications- None

Council Objective 4- Environment, Priority C04 Planning

8.1 Climate Change / Carbon/ Biodiversity- The Proposal in relation to confirming the TPO can only be seen as a positive impact on the environment. In particular, a woodland is both more resilient to climate change due to the variety of tree species present and provides increasing levels of wildlife habitat and carbon storage as it develops and matures.

Customer / Equalities and Diversity Implications

8.2 The customers have been provided with the relevant notification and the responses received are attached in the appendices. The customers will receive notification by post of the decision of the committee.

8.3 Equalities and Diversity implications- None

9. RISK MANAGEMENT

9.1 There are no significant risks associated with the details included in this report.

10. APPENDICES

Appendix A – Statement from Gavin Boyes, Senior Tree Officer

Appendix B – Current provisional TPO

Appendix C – 5 Objections on behalf of Freefield Investments Ltd.

Appendix D – Table summarising 61 Letters of support from Blackwell residents.

Appendix E – Letter dated 9th December from the Council to solicitors for Freefield Investments

Appendix F – Aerial photo 2013

Appendix G – Aerial photo 2003

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Appendix H – TEMPO Assessment
Appendix I – Revised TPO Schedule
Appendix J – Revised TPO Plan

11. BACKGROUND PAPERS

Representative letters and emails in support of TPO

12. KEY

TPO - Tree Preservation Order

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