

Bromsgrove District Council  
Tree Preservation Order  
(6) 2020

White Lodge  
Woodcote Green  
B61 9ED

**OBJECTION TO TREE  
PRESERVATION ORDER**

7<sup>th</sup> April 2020

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## **Summary of objection**

**The amenity value of the trees has not been assessed in a structured way, the TPO is not expedient and the inclusion of woodland is contrary to best practice.**

### **1.0 INTRODUCTION**

#### **1.1 Brief**

1.1.1 Marlow Consulting Ltd has been instructed by Mr Horgan to assess whether the Tree Preservation Order (TPO) served by Bromsgrove District Council on his property at White Lodge is justified.

1.1.2 Please find as Appendix 1 a brief CV of the author.

#### **1.2 Information provided**

1.2.1 Mr Horgan has provided Marlow Consulting Ltd with a .pdf copy of the Tree Preservation Order.

#### **1.3 Site visit**

1.3.1 Jeff Marlow of Marlow Consulting Ltd visited White Lodge on the 7<sup>th</sup> April 2020, met Mr Horgan and viewed the trees.

## 1.4 Location of the property

1.4.1 White Lodge is located to the east side of Woodcote Lane (see figure 1), along an unmade track which serves several other properties.



**Figure 1** Location of the property.

## 1.5 Description of the property

1.5.1 White Lodge is a large detached house, standing in gardens, with adjacent fields and woodland.

1.5.2 Along the lanes which run to the south and west sides of the property are mature hedges with individual trees and groups of trees (see figure 2), predominantly Oak.

1.5.3 A number of trees along the lanes have recently been felled or pruned.



**Figure 2** View of trees and hedges to the west side of White Lodge.

## 1.6 Public rights of way adjacent to the property

1.6.1 Please find as figure 3 a copy of an Ordnance Survey based plan which shows the public rights of way adjacent to the property.

### The rights of way using an Ordnance Survey map delivered by Bing

This web page is from [www.rowmaps.com](http://www.rowmaps.com), a project to show rights of way on maps. The underlying map on this web page is an Ordnance Survey map delivered by Bing.

The coloured lines that have been superimposed on this map show rights of way.

The following colours have been used for the coloured lines:

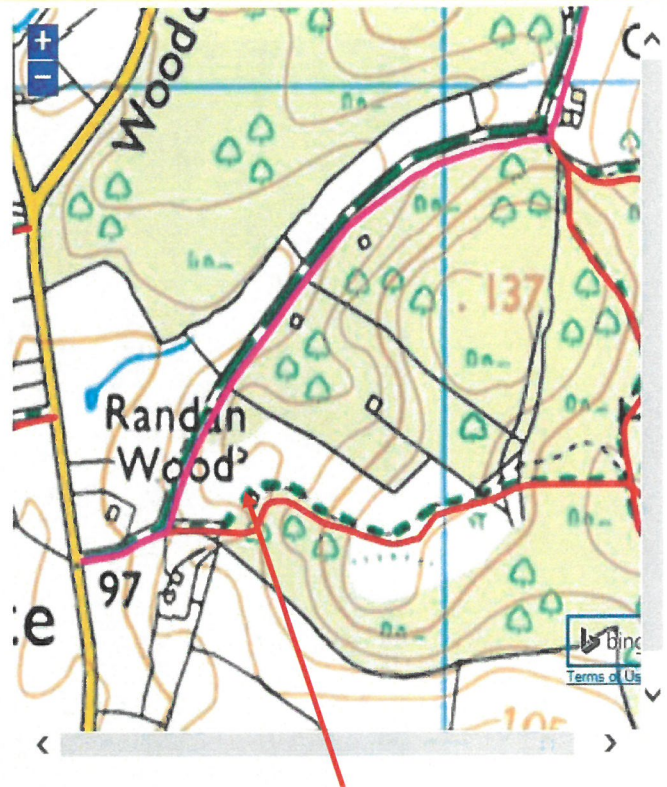
- solid red line:** footpath;
- solid fuchsia line:** bridleway;
- solid green line:** restricted byway;
- solid blue line:** byway open to all traffic.

If you click on a coloured line, a popup will appear giving some details about that right of way.

The popup has a button labelled *add to your route* enabling you to build a route of rights of way for a walk, run, etc. Once you've established your route you can ask for the route to be output in KML or GPX.

#### Credits and small print

The underlying map on this web page is an Ordnance Survey map provided by [Bing Maps](#). It is subject to these [Terms of Use](#). The Ordnance Survey map is © Crown copyright and database rights 2020 Ordnance Survey. By default, this web page uses a zoom level of 13 which provides an OS 1:50000 ("Landranger") map. You also get this kind of map at zoom level 14. The notation used by the OS on a 1:50000 map is shown on [this PDF page](#). If you zoom in to a level of 15 or higher, the underlying map is an OS 1:25000 ("Explorer") map whose notation is explained on [this PDF page](#).



**Figure 3** Public rights of Way.

White Lodge

## 1.7 Description of the Tree Preservation Order

- 1.7.1 Please find as Appendix 2 a copy of the TPO. The TPO protects 10 individual trees which are all Oaks, 6 groups which are Oak and Birch and a Woodland of mixed native broad leaves.

## 2.0 GUIDANCE IN RESPECT OF CREATING TREE PRESERVATION ORDERS

- 2.1 The legislation for the creation of Tree Preservation Orders is within The Town and Country Planning (Tree Preservation) (England) Regulations 2012.
- 2.2 Guidance in respect of the creation of a Tree Preservation Order is contained within National Planning Policy Framework, Planning Practice Guidance – Tree Preservation Orders and Trees in Conservation Areas.
- 2.3 Please find below as figure 4 an extract from Planning Practice Guide, page 1, which defines what is a Tree Preservation Order. A TPO is made in the interests of amenity.

1. Tree Preservation Orders – general (<http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/tree-preservation-orders-general/>)

### **Tree Preservation Orders – general**

#### **What is a Tree Preservation Order?**

A Tree Preservation Order is an order made by a local planning authority in England to protect specific trees, groups of trees or woodlands in the interests of amenity. An Order prohibits [\[2\]](#)

(<http://www.legislation.gov.uk/uk/si/2012/605/regulation/13/made>) the:

- cutting down
- topping
- lopping
- uprooting
- wilful damage
- wilful destruction

of trees without the local planning authority's written consent. If consent is given, it can be subject to conditions which have to be followed. In the Secretary of State's view, cutting roots is also a prohibited activity and requires the authority's consent.

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**Figure 4** What is a TPO.

### 3.0 REASON FOR OBJECTING

#### 3.1 No Assessment of amenity value

3.1.1 Planning Practice Guidance – Tree Preservation Orders and trees in conservation, page 3, states:

***“‘Amenity’ is not defined in law, so authorities need to exercise judgement when deciding it is within their powers to make an order.***

***Orders should be used to protect selected trees and woodlands if their removal would have a significant negative impact on the local environment and its enjoyment by the public. Before authorities make or confirm an Order they should be able to show that protection would bring a reasonable degree of public benefit in the present or future”.***

3.1.2 It then advises;

***“When considering whether trees should be protected by an Order, authorities are advised to develop ways of assessing the amenity value of trees in a structured and consistent way.....”***

*and*

***“Although some trees or woodlands may merit protection on amenity grounds it may not be expedient to make them the subject of an Order”.***

3.1.3 From the information supplied to Marlow Consulting Ltd there is no evidence to show that the amenity value of the trees has been assessed in a structured and consistent way. Several methodologies are freely available to do this, one of which is TEMPO (Tree Evaluation Method for Preservation Orders): Please find as Appendix 3 the TEMPO methodology.



## 3.2 Not Expedient

3.2.1 Planning Practice Guidance, page 4, refers to expediency and the relevant section is copied below as figure 5.

### **What does 'expedient' mean in practice?**

Although some trees or woodlands may merit protection on amenity grounds it may not be expedient to make them the subject of an Order. For example, it is unlikely to be necessary to make an Order in respect of trees which are under good arboricultural or silvicultural management.

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. Authorities can also consider other sources of risks to trees with significant amenity value. For example, changes in property ownership and intentions to fell trees are not always known in advance, so it may sometimes be appropriate to proactively make Orders as a precaution.

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### **Figure 5** Expediency.

3.2.2 It states that it is unlikely to be necessary to make an Order in respect of trees which are under good arboricultural or silvicultural management. Mr Horgan has recently carried out works to trees on his property, primarily with an aim of improving the hedges in which the trees stand. I understand this has been done in consultation and with the agreement of his neighbours. Mr Horgan has carried out works which he believes comply with good arboricultural management.

3.2.3 As I understand, no approach has been made by the Local Authority to Mr Horgan to discuss the recent tree works, to understand why they have been carried out or to offer advice if they felt they were unreasonable.

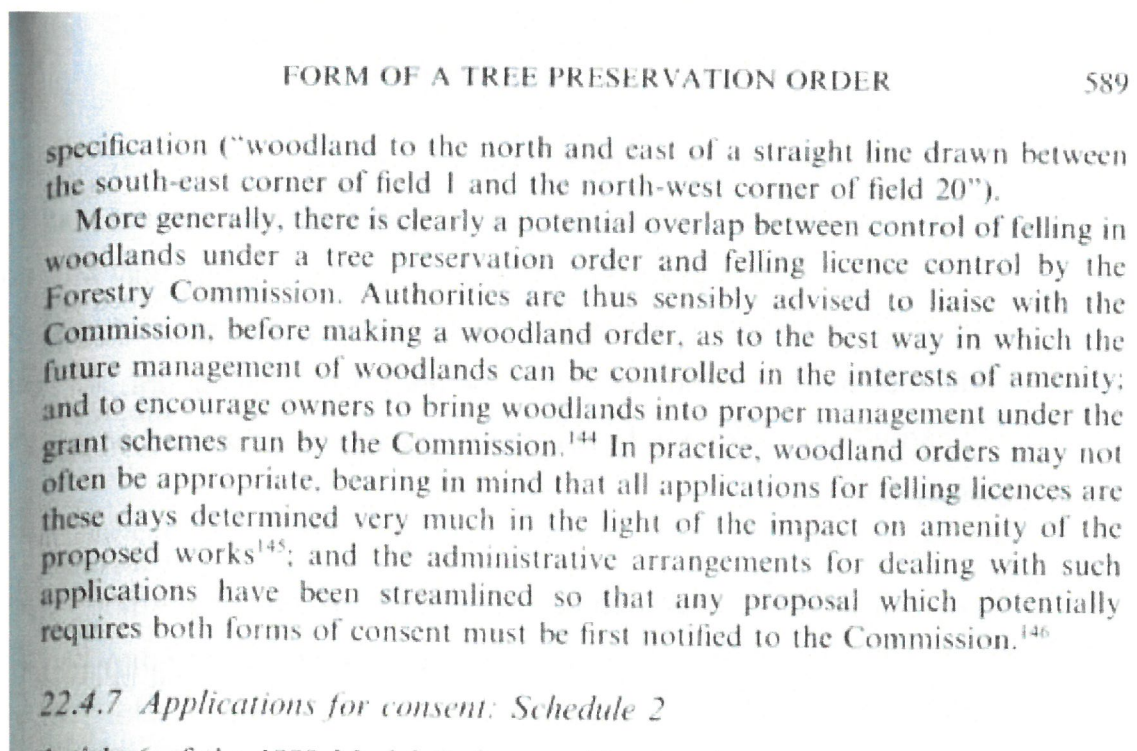
3.2.4 To place a TPO on the majority of the trees and woodland within his property, in my opinion, is not expedient and seems very heavy handed.

### 3.3 Woodland should not be included

3.3.1 A Felling Licence is required from the Forestry Commission for the felling of more than 5m<sup>3</sup> of trees in a woodland in any calendar quarter. Thus, there is an overlap between the controls imposed by the Felling Licence and the TPO.

3.3.2 Mr Horgan has previously obtained a Felling Licence for tree removal in the woodland, which demonstrates that this system of oversight by the Forestry Commission works.

3.3.3 In Charles Mynors book 'The Law of Trees, Forests and Hedges (second addition) he highlights in section 22.4.6 (see figure 6) that in general terms it is not appropriate for Local Authorities to create woodland TPOs. The woodland (W1) should not have been considered or included in the TPO.



**Figure 6** Extract from The Law of Trees, Forests and hedges.

## 4.0 CONCLUSIONS

- 4.1 The Local Authority has made no attempt to discuss tree management at White Lodge with Mr Horgan before making the TPO, has provided no justification for making the TPO and has provided no structured assessment of the amenity value of the trees and why they are worthy of protection.
- 4.2 In my opinion, the expediency test has not been proven and the TPO has been used in an unreasonable and heavy handed manner.
- 4.3 The inclusion of the woodland in the TPO is contrary to good practice and is unnecessary.



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7<sup>th</sup> April 2020

