

Report of:	Meeting	Date	Item No.
Mark Billington Corporate Director Environment	Planning Committee	1 June 2022	

**Wyre Council Tree Preservation Order No 3 of 2022: Land at Little Poulton Lane, Poulton le Fylde.**

**1. Purpose of report**

- 1.1** To consider the objection to the making of Wyre Council Tree Preservation Order No 3 of 2022: Land at Little Poulton Lane, Poulton le Fylde.

**2. Outcomes**

- 2.1** To determine whether or not to confirm the Wyre Council Tree Preservation Order No 3 of 2022: Land at Little Poulton Lane, Poulton le Fylde.
- 2.2** An effective tree preservation order makes it an offence to do any works to the protected trees without first gaining consent from the Local Planning Authority unless such works are covered by an exemption within the Town and Country Planning (Tree Preservation) (England) Regulations 2012.

**3. Recommendation**

- 3.1** That the Wyre Council Tree Preservation Order No 3 of 2022: Land at Little Poulton Lane, Poulton le Fylde be confirmed with modification, the modification being the addition to the Schedule of the following:  
Woodland comprising ash, oak, alder, silver birch and wild cherry.

**4. Legislative background to the TPO**

- 4.1** Section 198 of The Town and Country Planning Act 1990 (as amended) empowers Local Planning Authorities to protect trees or woodlands in their area in the interests of amenity by making tree preservation orders. Following the introduction of **The Town and Country Planning (Tree Preservation) (England) Regulations 2012**, The Local Planning

Authority is required to confirm a tree preservation order within six months of the issue date if it is to continue to have effect after that period. When an objection is received, a decision on confirmation is referred to the Planning Committee.

- 4.2** Tree preservation orders are usually made because it is considered expedient in the interests of amenity to protect the trees from felling or pruning. 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 an order as a precaution.
- 4.3** Amenity is not defined in law but the government's advice is that authorities need to exercise judgement when deciding whether 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 (GOV.UK, 2014).
- 4.4** Therefore the following criteria should be taken into account when assessing the amenity value of trees:
- **Visibility:** *the extent to which the trees or woodlands can be seen by the general public will inform the LPA's assessment of whether its impact on the local environment is significant. The trees, or at least part of them, should normally be visible from a public place, such as a road or footpath, or accessible by the public.*
  - **Individual, collective and wider impact:** *public visibility alone will not be sufficient to warrant an Order. The authority is advised to also assess the particular importance of an individual tree, of groups of trees or of woodlands by reference to it of their characteristics including:*
    - *Size and form;*
    - *Future potential as amenity;*
    - *Rarity or historic value;*
    - *Contribution to, and relationship with, the landscape; and*
    - *Contribution to the character or appearance of a conservation area.*
  - **Other factors:** *where relevant to an assessment of the amenity value of trees or woodlands, authorities may consider taking into account other factors, such as importance to nature conservation or response to climate change, although according to guidance these "Other factors" alone would not warrant the making an order.*

(Source: *Tree Preservation Orders and trees in Conservation Areas/Planning Practice Guidance March 2014*).

- 4.5 The Regulation 5 notice, which is a legal notice that is served with the tree preservation order documents on the owner and occupier of the land affected by a tree preservation order and also the owner and occupier of the adjoining land, states the reason why the trees have been protected and invites objections or representations to be made to the Local Planning Authority within a 28-day period. The Regulation 5 Notice issued in respect of the land affected by the TPO gave the reason for making the TPO as *“it is expedient in the interest of amenity”*.
- 4.6 Once made, a tree preservation order takes effect provisionally for six months, but must be confirmed by the Local Planning Authority within that period to continue to be effective. If it is not confirmed the tree preservation order ceases to have effect and the trees are unprotected. When objections or representations are received the Council must consider those before any decision is made whether or not to confirm the order. In these cases, referral to Planning Committee is required by the Council’s Constitution.
- 4.7 Within the framework of a TPO, a Local Planning Authority may classify trees as occurring either as individuals, groups, woodlands, or areas.
- 4.8 A Woodland designation recognises that natural regeneration from seed is integral to self-sustaining woodland and therefore covers each and every tree irrespective of whether it was growing at the time the TPO was made. The Woodland designation covers future trees. The Woodland designation can make allowance for some degree of woodland management taking place in order to sustain the woodland.

## **5. Background to making the TPO**

- 5.1 On 15 February 2022 the Tree Officer received a request from the Planning Department to provide comments in relation to 22/00081/PREAPP for residential development on Land at Little Poulton Lane, Poulton-Le-Fylde. On 18 February 2022 the tree officer responded as summarised below:
- 5.2 The concept plan shows that the existing woodland would be divided and reduced in size to make way for a vehicle access and footpath , subject to mitigation woodland planting with new tree belt along the NE-SW site boundary. Notes provided indicate a large percentage of the tree cover is affected by ash dieback. No details have been provided on the severity of the symptoms. The Tree Officer would object to a road dividing a woodland as the woodland should be managed sustainably and in accordance with UK Forestry Standard.
- 5.3 The Tree Officer visited site on 1 March 2022 and undertook an appropriate tree evaluation method for preservation orders (“TEMPO”) which guided the subsequent decision to make the TPO. The TPO applies to W1 which

is located on land at Little Poulton Lane, Poulton-le-Fylde. A copy of the completed TEMPO survey data sheet relating to the TPO along with associated image of the TPO are appended to this report at Appendix 1.

On 22 March 2022 Wyre Council made Tree Preservation Order No 3 of 2022: Land at Little Poulton Lane, Poulton le Fylde. A copy of the TPO plan is appended to this report at Appendix 2.

The Council served correspondence on the owners and occupiers of the land affected by the TPO and on those adjoining, notifying them of the making of the TPO in accordance with Regulation 5 of the Town and Country Planning (Tree Preservation) (England) Regulations 2012.

The period for any objections and representations to be made to the Council in respect of the TPO ended on 19 April 2022. The Council received an objection letter dated 19 April 2022 from a chartered arboriculturalist acting on behalf of their client the owner of the land on which W1 is located. A redacted copy of the letter of objection is appended to this report at Appendix 3.

## **6. Summary of Objection**

### **1. Species Suitability for Protection**

The 'Arboricultural Constraints Appraisal', undertaken in December 2021, states that approx.. 70% of the species within the area of trees that has been assigned protection as W1 are young to semi-mature Ash trees and that: "Various Ash trees are evidently colonised by Ash Dieback Disease (ADD) (*Hymenoscyphus fraxineus*), with resultant short projected safe life expectancies. ADD colonisation is projected to cause the decline of the group within 5 years.

Young to semi-mature Ash trees are the most susceptible to ADD, often dying or becoming so badly affected that they retain little, if any, amenity, within short time periods of just several years. As it is considered good practice when making TPOs to only consider trees with at least 10 years' of useful life expectancy for protection, and it is projected that most of the Ash in the area of trees allocated protection, and by extension the woodland itself, have very short projected remaining life expectancies, it can reasonably be concluded that they are unsuitable for TPO protection.

### **2. Reasons for making the Order**

The Council has failed to demonstrate that the trees are either an amenity or that it is expedient to make the Order. In this respect it is emphasised that the safeguarding of trees in the context of a proposed development, as is the case with the site under consideration, is normally achieved through the robust tree protection measures afforded under the UK's planning system, which places a statutory duty on Councils to consider trees in respect of any proposed development, and subsequently augmented under mandatory Government

guidance in the form of BS5837:2012 - Trees in relation to design, demolition and construction – Recommendations.

The planning system and its associated guidance place an explicit onus on the applicant of any proposed development to provide appropriate and sufficient information relating to trees as a component of their planning application, and for any trees of a sufficient quality to be retained and protected as components of the development's design.

Primary plans presented for pre application discussions indicated that the overall area of trees was proposed for retention with associated management works (e.g. felling of Ash affected by ADD and associated new native woodland planting) intended to assist in ensuring the long-term sustainability of tree cover in the locality.

The making of a TPO at the site under consideration, and in particular the use of a Woodland Order, is not, under the circumstances at the current time, a suitable method of tree protection. Furthermore, the imposition of a TPO at the site could also potentially be construed as the Council attempting to impose a greater control over the land in question than they have the right to.

### **3. Expediency**

The Council has assumed that the trees are desirable even though they are limited from an accessible viewpoint.

### **4. Type of Order served**

The schedule of the Order does not list the species, but merely states woodland "W1". The omission of a species list for W1 is due to the fact the majority of the trees are Ash and that most can realistically be classed as dying due to the projected effects of Ash Dieback Disease.

The trees in question were planted relatively recently and are mostly affected by Ash Dieback Disease. The biodiversity normally associated with a woodland, and which a Woodland Order is subsequently intended to protect, is lacking in this case. As such, it can reasonably be concluded that this area of trees under consideration is not a woodland as envisaged by the legislation and associated guidance.

Woodland classifications place significant restrictions on works that can be undertaken within the woodland itself thereby requiring the tree owner to apply for almost all works, however, minor, that may be required. In this respect it is noted woodlands normally require regular general management works, such as silvicultural thinning, etc., and that the woodland classification is therefore considered to be onerous, thereby resulting in a counterproductive situation where the owner fails to manage the area of trees due to regular burdensome and costly procedural administrative requirements.

## 7.0 Response to Objection

- 7.1** It has been found that there is a significant association between ash tree age class and *Hymenoscyphus fraxineus* (commonly known as 'ash dieback disease') severity of symptoms. Young ash trees are often killed quickly whilst older ash trees offer more resilience initially. That said, interplay between genetic resilience of individual ash trees, climatic and site factors have also been shown to affect the severity of *H. fraxineus* amongst ash tree populations. Moreover, the management aims of woodlands that contain ash trees should seek to lessen the effect of the disease and conserve ecological benefits whilst maintaining public safety where required.
- 7.2** Symptoms of ash dieback disease range in severity from minor, moderate, severe; death. The symptoms include: discoloration and wilting of foliage (observable during the growing season), death of shoots, branches and stems alongside the presence of diamond shaped lesions resulting in girdling and extensive upper crown dieback. High volumes of epicormic shoots occurrence, lower stem collar lesions and eventual death. In some cases death comes via colonization by a secondary pathogen such as honey fungus.
- 7.3** The tree officer has not viewed the document 'Arboricultural Constraints Appraisal' referred to within the objection. However, the tree officer exercised judgement having regard to government guidance when deciding to make the TPO. A Tree Evaluation Method for Tree Preservation Orders (TEMPO) was undertaken on 1 March 2022 in respect of the TPO. The TEMPO comprised an amenity assessment in relation to the condition and suitability of the trees along with retention span, tree species, sizes of the trees included, life expectancy, public visibility, other factors and expediency. The tree officer used a right of official entry to access W1 via alongside the adjacent public right of way. It was found that W1 comprises of approx.. 60% ash trees of which approx.. half were in a fair condition and half were in poor condition and infected with ash dieback disease and/or carrying deadwood. The ash trees are mostly of a semi mature age class. The remaining approx.. 40 % tree species in W1 comprised of semi-mature oak, alder, silver birch and wild cherry, all in fair condition. The average condition of W1 as a whole was recorded which included the factoring in of those ash trees in poor condition and infected with ash dieback disease. Moreover, the mean retention span of W1 as a whole was recorded which included factoring in the worst case estimate that 70% of the ash trees will perish in under ten years if no management intervention takes place.
- 7.4** When considering other factors the tree officer identified that W1 has habitat importance when viewed as a whole and is not lacking in biodiversity. Ash trees are important from an ecological perspective as they support many species of birds, mammals, vascular plants, lichens and fungi. E.g. the ash bud moth *Prays fraxinella* which only feed on ash leaves (larvae mine these) and ash buds (adult insects). Oak is a keystone species providing opportunities for 2300 ecological species,

Alders and Silver Birches are both coloniser species that improve soil conditions on site due to symbiotic associations with bacteria via exchange occurring in nitrogen fixing root nodules, and wild cherry provides food for birds, moths and butterflies. The range of deadwood habitats within W1 also benefits biodiversity.

- 7.5** The tree officer regards the 22/00081/PREAPP concept plan showing the division and reduction of the existing woodland to make way for vehicle access route and footpath (W1) as an indication of threat to trees.

The TEMPO assessment showed the making of the TPO to be defensible and the TPO was made 'because expedient in the interest of amenity to protect the woodland'. The TEMPO scoring also reflects the need for appropriate woodland management requirements.

For completeness, the TEMPO at Appendix 1 undertaken in relation to the TPO shows the amenity and expediency assessments for those aspects of the TPO.

- 7.6** The tree officer agrees that it is vital to safeguard suitable trees in the context of proposed development and to secure appropriate tree protection measures that follow the recommendations found in BS5837:2012. However the viability of residential development has only been informally discussed under 22/00081/PREAPP. It is understood that management works relating to ensuring the sustainability of W1 are being considered whether future development of the site is a possibility or not.

- 7.7** 22/00081/PREAPP concept plan shows the division and reduction of the existing woodland (W1) to make way for vehicle access route and footpath. This has been interpreted by the tree officer as not intending to retain the overall area of trees. Division of W1 is likely to cause its habitat attributes to become disconnected and dependant ecological species will find it difficult to move through. Also, the flow of water through W1 soil could also become disrupted due to soil compaction should constructing of a road through come to pass.

- 7.8** Management works are required in relation to dealing with ash dieback disease found on affected ash within W1 in order to sustain long-term tree cover. Providing the Forestry Commission (FC) with the details in advance of planned selective thinning of affected ash trees, such as a location plan, numbers of trees, sizes and images of evidencing severity for consideration is likely to meet with exception from the need to obtain consent under a Felling License from the FC. Plans should include retention of healthier ash trees as some may have genetic resilience which is essential for passing on these characteristics to their offspring. Copying in the local authority to all correspondence with the FC relating to such management works proposals would be likely to be sufficient for TPO record purposes and agreement.

- 7.9** If the TPO is confirmed, an application for consent regarding TPO tree works would continue to be required for consideration in the absence of

obtaining consent or under a FC felling licence or meeting with an associated exception.

The species of trees are identified on the TEMPO. The TPO applies a woodland classification and the area of woodland is clearly identified by the TPO and the TPO map. Accordingly identification of the individual species is not required for the TPO to be effective because it automatically applies to every tree within the identified area irrespective of species in any event. Nonetheless the Order can be modified to include the species of trees, as to do so would not extend its application in any way.

Advice pertaining to Planning Committee and its procedures along with a copy of this report relating to the TPO have been forwarded to the objector in reasonable advance of the meeting of Planning Committee on 1 June 2022.

## 8.0 Concluding remarks

- 8.1** It is considered that the TPO has been properly made in the interests of securing the contribution and benefit that the TPO applies to the public amenity in the area. The TPO protects important elements of the local landscape and contributes to the local environment. W1 presently protected by the TPO has been assessed in a structured and consistent way using an approved method.
- 8.2** It is considered that the procedural requirements of the legislation have been followed in the creation of the TPO and determinations made using a widely accepted method which includes expediency assessment has occurred in this case. Having regard to the legislation and the Government Guidance, it is considered that the TPO is fully justified in all respects and should be confirmed with modification as described above.

<b>Financial and Legal Implications</b>	
Finance	None.
Legal	Before confirming a Tree Preservation Order, the Local Planning Authority must consider any objections/representations made within the 28-day objection period. If, having considered any objections/representations received, the Local Planning Authority is satisfied that the tree merits a TPO; it may confirm the Order under the Town and Country Planning Act 1990 and supporting Regulations. The LPA may also confirm an Order in modified form, revoke it, or allow it to lapse. However it cannot add to the Schedule references to a tree to which the Order did not previously apply. There is no right of appeal to the Secretary of State, but a challenge may be made to the High Court on a point of law.



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### **Other risks/implications: checklist**

If there are significant implications arising from this report on any issues marked with a ✓ below, the report author will have consulted with the appropriate specialist officers on those implications and addressed them in the body of the report. There are no significant implications arising directly from this report, for those issues marked with an x.

<b>implications</b>	<b>✓ / x</b>
community safety	x
equality and diversity	x
<b>sustainability</b>	✓
health and safety	x

<b>risks/implications</b>	<b>✓ / x</b>
asset management	X
<b>climate change</b>	✓
data protection	X

<b>report author</b>	<b>telephone no.</b>	<b>email</b>	<b>Date</b>
Ryan Arrell BSc (Hons), HND, LANTRA qualified professional tree inspector.	01253 887614	Ryan.Arrell@wyre.gov.uk	11 May 2022

<b>List of background papers:</b>		
<b>name of document</b>	<b>date</b>	<b>where available for inspection</b>
Wyre Council TPO 3 of 2022 Land at Little Poulton Lane, Poulton le Fylde.	22 March 2022	Room 134 or by email to Tree Officer.

### **List of Appendices**

#### **Appendices:**

- 1** –TEMPO survey data sheet and also public visibility images of W1.
- 2** –TPO plan.
- 3** – Redacted copy of letter of objection.

### **References List**

*Tree Preservation Orders and trees in Conservation Areas.* GOV.UK, (2014) Accessed Via <https://www.gov.uk/guidance/tree-preservation-orders-and-trees-in-conservation-areas>

Town and Country Planning (Tree Preservation) (England) Regulations 2012.

Appendix 1

**TREE EVALUATION METHOD FOR PRESERVATION ORDERS - TEMPO**  
 SURVEY DATA SHEET & DECISION GUIDE

Date: 1st March 2012 Surveyor: Ryan Arnold

Tree Details  
 TPO Ref (if applicable): Woodstock  
 Owner (if known): non, oak, alder, syc, ash  
 Species: Wild cherry  
 Location: Ward Little Bowbourn, Woodstock

REFER TO GUIDANCE NOTE FOR ALL DEFINITIONS

**Part 1: Overall Assessment**

**a) Condition & suitability for TPO**

5) Good	Highly suitable	Score & Notes: <u>W1 - 60% score, 100% score, 100% score, 100% score, 100% score</u> <u>2 - reflects average condition of W1</u> <u>all four</u>
4) Fair/Deficient	Suitable	
3) Poor	Unsuitable to be suitable	
2) Dead/Wrong/Dangerous*	Unsuitable	
* Applies to existing controls and is intended to apply to certain immediate defects only		

**b) Retention span (in years) & suitability for TPO**

5) 200+	Highly suitable	Score & Notes <u>2 - mean retention span of W1 as a whole</u>
4) 100-200	Very suitable	
3) 50-100	Suitable	
2) 20-50	Just suitable	
1) <20	Unsuitable	

\*Includes trees which are an existing or near future nuisance, including those posing their context, or which are significantly impeding the potential of other trees of better quality

**c) Retain public visibility & suitability for TPO**  
Consider publicly potential for future visibility with changed land use

5) Very large trees with some visibility, or prominent large trees	Highly suitable	Score & Notes <u>3</u>
4) Large trees, or medium trees clearly visible to the public	Suitable	
3) Medium trees, or large trees with limited view only	Suitable	
2) Young, small, or medium/large trees visible only with difficulty	Marginally suitable	
1) Trees not visible to the public, regardless of size	Probably unsuitable	

**d) Other factors**  
Trees must have accrued 7 or more points (with no zero score) to qualify

5) Principal components of formal arboreal/cultural features, or veteran trees	Score & Notes <u>3 - W1 assessed as a whole</u>
4) Tree groups, or principal members of groups important for their location	
3) Trees with identifiable historic, commemorative or habitat importance	
2) Trees of particularly good form, especially if rare or unusual	
1) Trees with none of the above additional redeeming features (inc. those of indifferent form)	

-2) Trees with poor form on which are generally unsuitable for their location

**Part 2: Urgency assessment**  
Trees must have accrued 30 or more points to qualify

5) Immediate threat to tree inc. 1.1.11 Notice	Score & Notes <u>2</u>
4) Foreseeable threat to tree	
3) Perceived threat to tree	
2) Precautionary only	

**Part 3: Decision guide**

Any 0	Do not apply TPO	Add Scores for Total <u>12</u>	Decision: <u>Create TPO</u>
1-6	TPO indefensible		
7-11	Does not merit TPO		
12-15	TPO defensible		
16+	Definitely merits TPO		



Above: View when looking north west towards W1 from Public right of way 2-2-FP 1.

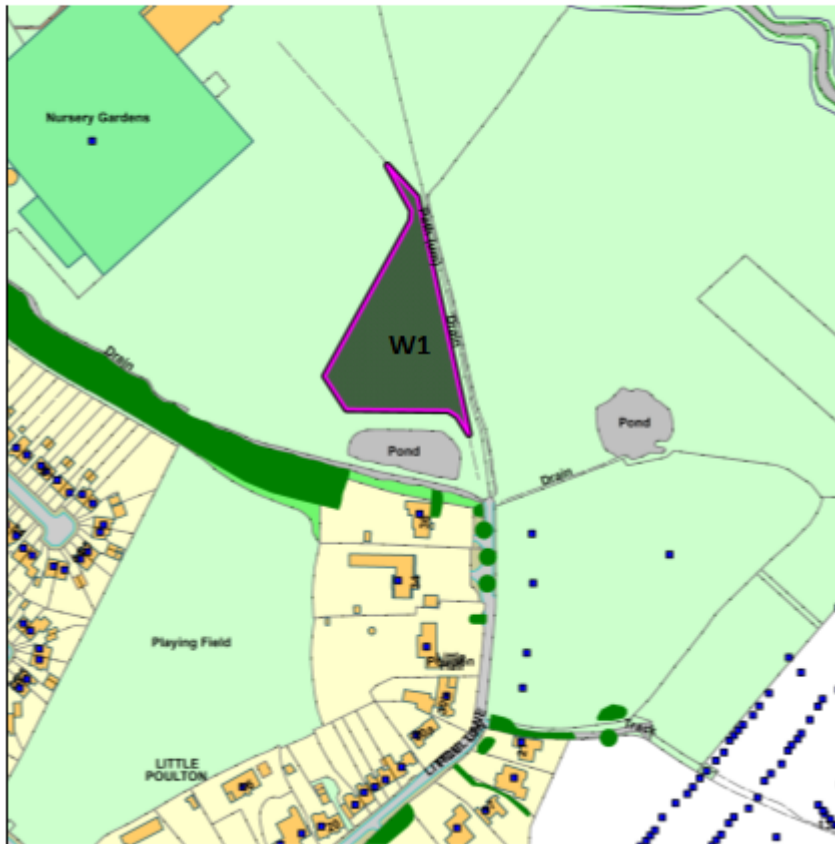


Above: Access point to Public right of way 2-2-FP 1 at northern end of Little Poulton Lane, W1 located to north west. March 2009 © 2022 Google United Kingdom.

## Appendix 2

Wyre Council Tree Preservation Order No 3 of 2022

Land at Little Poulton Lane, Poulton le Fylde



Scale : 1:2476

## Appendix 3

For the Attention of Mr Ryan Arell  
Tree and Woodlands Officer  
Wyre Council  
Leisure Services  
Wyre Civic Services  
Breck Road  
Poulton Le Fylde  
FY8 7PU



By Email and Registered Post

19/04/2022

Our Ref: BTC2358  
Your Ref: PLG/8/

Dear Mr Arell

### **OBJECTION TO THE WYRE COUNCIL TREE PRESERVATION ORDER 003/2022/TPO - LAND AT LITTLE POULTON LANE POULTON LE FYLDE LANCSHIRE FY8 7HE**

On behalf of our client, [REDACTED] and under the terms and conditions of the Town and Country Planning (Tree Preservation) (England) Regulations 2012, I wish to register a formal objection to the above Tree Preservation Order (TPO).

In this respect I wish to object to the TPO under consideration on the following grounds:

1. Species Suitability for Protection;
2. Reasons for making the Order;
3. Expediency; and
4. Type of Order served

#### **1. Species Suitability for Protection**

1.1 Paragraph 028 of the current Government guidance in relation to the making and administering of TPOs specifically states that "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".

1.2 With regard to the site under consideration it is noted that the 'Arboricultural Constraints Appraisal', undertaken in December 2021, explicitly states that approximately 70% of the species within the area of trees that has been assigned protection under the TPO as woodland W1 are young to semi-mature Ash trees and that "Various Ash trees [are] evidently colonised by Ash Dieback Disease (ADD) (*Hymenoscyphus fraxineus*), with resultant short projected safe life expectancies" subsequently concluding that "ADD colonisation [is] projected to cause [the] decline of [the] group over [a] relatively short-term (i.e. within 5 years)".

1.3 In this respect it is emphasised that young to semi-mature Ash trees are the most susceptible to ADD, often dying or becoming so badly affected that they retain little, if any, amenity, within short time periods of just several years. As it is considered good practice when making TPOs to only consider trees with at least 10 years' of useful life expectancy for protection, and it is projected that most of the Ash in the area of trees allocated protection, and by extension the woodland itself, have very short projected remaining life expectancies, it can reasonably be concluded that they are unsuitable for TPO protection.

1.4 As such, the species (i.e. Ash) of tree that makes up the bulk of the area included in the TPO is considered unsuitable for protection.

#### **2. Reasons for Making the Order**

- 2.1 The Regulation 5 Notice served with the TPO states that the reason for making the Order is "because it is expedient in the interest of amenity". Nonetheless, it is considered that, without any details as to why the Council consider it important to protect the trees they have failed to demonstrate that the trees are either an amenity or that it is expedient to make the Order (see Paragraphs 006 to 008 and Paragraph 010 of the current Government Guidance).
- 2.2 In this respect it is emphasised that the safeguarding of trees in the context of a proposed development, as is the case with the site under consideration, is normally achieved through the robust tree protection measures afforded under the UK's planning system, which places a statutory duty on Councils to consider trees in respect of any proposed development, and subsequently augmented under mandatory Government guidance in the form of BS5837:2012 - Trees in relation to design, demolition and construction – Recommendations.
- 2.3 In turn, the planning system and its associated guidance place an explicit onus on the applicant of any proposed development to provide appropriate and sufficient information relating to trees as a component of their planning application, and for any trees of a sufficient quality to be retained and protected as components of the development's design.
- 2.4 With specific regard to this matter it is noted that pre-application discussions between the Council and the client's planning consultant regarding potential development of the site under consideration have recently been undertaken, and that the primary plans presented indicated that the overall area of trees was proposed for retention with associated management works (e.g. felling of Ash affected by ADD and associated new native woodland planting) intended to assist in ensuring the long-term sustainability of tree cover in the locality.
- 2.5 Consequently, it can reasonably be concluded that making a TPO at the site under consideration, and in particular the use of a Woodland Order, is not, under the circumstances at the current time, a suitable method of tree protection.
- 2.6 Furthermore, the imposition of a TPO at the site could also potentially be construed as the Council attempting to impose a greater control over the land in question than they have the right to.

### **3. Expediency**

- 3.1 Paragraph 005 of the Government guidance with regard to TPOs states that Councils can make an Order if it appears to them to be "expedient in the interests of amenity to make provision for the preservation of trees or woodlands in their area".
- 3.2 In this respect it is emphasised that there should be sufficient visibility of trees that can be classed as an "amenity", the definition of which is 'a desirable or useful feature or an attractive place'. Nonetheless, it is considered that the Council has assumed that the trees are desirable even though they are limited from an accessible viewpoint.

### **4. Type of Order Served**

- 4.1 With regard to the use of a Woodland Order it is noted that the trees are predominantly a young plantation and, as previously stated, are mostly Ash. However, it is noted that the schedule of the Order does not, as it should, list the species, but merely states woodland "W1". It is therefore considered that the omission of a species list for W1 is due to the fact the majority of the trees are Ash and that most can realistically be classed as dying due to the projected effects of Ash Dieback Disease.
- 4.2 As stated within the Government's guidance with regard to Tree Preservation Orders: "When should the woodland category be used?" the purpose of this category is "to safeguard a woodland as a whole", thereby implying that this is in reference to a set of

woodland components that constitute its biodiversity rather than just the tree cover. Consequently, as the trees in question were planted relatively recently and are mostly affected by Ash Dieback Disease than the biodiversity normally associated with a woodland, and which a Woodland Order is subsequently intended to protect, is lacking in this case. As such, it can reasonably be concluded that this area of trees under consideration is not a woodland as envisaged by the legislation and associated guidance.

4.3 Furthermore, it is also noted that Woodland classifications place significant restrictions on works that can be undertaken within the woodland itself thereby requiring the tree owner to apply for almost all works, however, minor, that may be required. In this respect it is noted woodlands normally require regular general management works, such as silvicultural thinning, etc., and that the woodland classification is therefore considered to be onerous, thereby resulting in a counterproductive situation where the owner fails to manage the area of trees due to regular burdensome and costly procedural administrative requirements.

4.4 Consequently, the use of the Woodland classification is considered to be unsuitable in this specific situation.

#### **Conclusions and Recommendations**

It is understood that the Council has a duty, where expedient, to protect important trees for their various landscape and ecological functions, and that TPOs are an essential planning tool in this respect.

Nonetheless, it should be noted that TPOs should not be used without proper deliberation of the circumstances under consideration and, in this case, the poor condition of the majority of the trees included in the TPO, due to the presence of Ash Dieback Disease, must therefore be taken into account.

In this respect it is emphasized that the Council should not be serving a TPO on trees, such as the Ash that make up the bulk of the 'woodland' included in the TPO, that are dying or have less than ten years of useful life expectancy.

Consequently, it can reasonably be concluded that, at the current time, there are no substantiate grounds for making a TPO due to the presence of Ash Dieback Disease and the effects that this is projected to have on the area of trees in question.

In addition to the above it is noted that the Council have failed to provide sufficient justification and associated details of their reasons why they consider it expedient to make the TPO, or why they consider the trees to be an 'amenity' of sufficient value to warrant statutory protection.

The Council have also failed to consider the proposed long-term improvement of the area of trees under consideration as a component of the site proposals in the context of a planning application for the wider site, which could be successfully dealt with at a subsequent planning application.

As such, it can reasonably be concluded that the Council has failed to demonstrate either expediency or amenity when making the TPO, as required by current Government guidance.

Furthermore, the use of the Woodland classification is considered to be unsuitable in this specific situation due to a range of reasons.

Consequently, and for the reasons outlined above, I formally object to Tree Preservation Order '003/2022/TPO', and respectfully request that the Order is not confirmed.

Finally, I would be obliged if you would inform me of the Council's decision on this matter in the light of this objection, and look forward to hearing from you in due course.

Yours faithfully

  
Mr. Edwyn Ho CEng MInst MCOT Chartered Arboriculturist  
Managing Director & Principal Consultant

    
Registered Consultant Chartered Environmentalist







