

## **TREE PRESERVATION ORDER APPEAL**

### **DERBYSHIRE DALES DISTRICT COUNCIL TREE PRESERVATION ORDER 193 - TREES ON LAND NORTH OF ASHLEIGH HOUSE, CROMFORD ROAD, WIRKSWORTH**

#### **1. PURPOSE OF REPORT**

To consider objections to Derbyshire Dales District Council Tree Preservation Order 193 for Trees on Land North of Ashleigh House, Cromford Road, Wirksworth.

#### **2. RELEVANT INFORMATION**

##### **2.1 INTRODUCTION**

Derbyshire Dales District Council Tree Preservation Order 193 at Land North of Ashleigh House, Cromford Road, Wirksworth protects a group of trees of mixed species.

A copy of the Order and associated plan is attached as Appendix 1 to this report.

##### **2.2 NATIONAL GUIDANCE**

###### **National Planning Practice Guidance**

This guidance sets out how the legislation relating to Tree Preservation Orders should be implemented. The making of a Tree Preservation Order can be instigated where it is expedient in the interests of amenity to make provision for the preservation of trees or woodlands. It advises that Orders should be used to protect trees where their removal would have significant negative impact on the local environment and its enjoyment by the public.

The law relating to Tree Preservation Orders is in Part VIII of the Town and Country Planning Act 1990 as amended and in the Town and Country Planning (Tree Preservation) (England) Regulations 2012 which came into force on 6 April 2012.

##### **2.3 SITE DESCRIPTION**

The land North of Ashleigh House, Cromford Road, Wirksworth which is subject to TPO 193 is not within a Conservation Area. It is in a 'within-settlement' location. The site is roughly rectangular in shape and measures approx. 75 x 40m. It consists of a group of mixed species including ash, norway maple, whitebeam, beech, larch, lime,

oak, birch, willow, elm, hawthorn, damson and elder. Approximately 70 trees in total with a range of ages.

To the north of the site is Ravenstor Road with a large area of woodland beyond that extends alongside Cromford Road. To the south of the site lies Ashleigh House and the business premises and yard of Thompsons Tree Services. To the east of the site is Cromford Road and residential properties beyond. To the west of the site is Ravenstor Business Park and further areas of woodland.

Parts of the woodlands to the N and W of the site are subject to Derbyshire County Council TPO.

## **2.4 GROUNDS FOR MAKING THE ORDER**

TPO 193 was made 14 April 2022 to ensure the trees forming the group are retained in the long term because they are considered by the Council to provide significant amenity to the local area; specifically:

1. The group as a whole appears to currently be in fair structural and physiological condition.
2. The TPO group is prominent to the public realm within largely built up surroundings. The trees forming the group are clearly seen, up close, by many people every day.
3. The TPO group forms a welcome green break in the streetscape for users of the road and footway between the built up areas of the town of Wirksworth and Bolehill.
4. The TPO group is visually attractive to users of adjacent road and footways, bringing the well documented and diverse benefits provided by nature into the built up area.
5. The TPO group forms part of larger group of trees that extend alongside the road further along Cromford Road in the direction of Cromford.
6. The TPO group contains particularly prominent trees alongside the boundary with the highway. These include several large mature ash which unfortunately are likely to die within the next 2-5 of years from ash dieback. The new TPO will allow the Council to require replacements to be planted, and could enforce this if necessary. This would ensure the long term continuation of tree cover at the location.

7. The TPO tree group contains a good variety of tree species, many of which are native or naturalized to England. This implies :
  - good ecological value,
  - seasonal changes which have been shown to be beneficial to mental health of people who experience the trees,
  - softening of built up areas by trees has been demonstrated to have many benefits, including promotion of biodiversity, flood reduction, improved use of local businesses, improved human long term physical and mental health, reduction of air pollution, provision of shading, stronger feelings of community, etc..
  - good resistance to changing climate and good resistance to potential future pest/disease threats.
8. The TPO tree group is considered likely to provide significant ecological value for local wildlife biodiversity, particularly birds and mammals, in terms of shelter, food and reproduction. This view was supported by a Derbyshire Wildlife Trust (dated 9 May 2022) in their consultation response in respect of application 22/00180/FUL.

The TPO, if confirmed, will allow DDDC to exert some control over future management of the trees, both individually and as a group. The TPO is not intended to restrict appropriate management of the trees in the group.

It is reasonably foreseeable that most, or maybe all, of the ash trees within the group are likely to die from ash dieback disease in the coming years. Confirmation of the TPO would ensure provision of suitable replacement trees should the ash trees in the group die and need to be removed.

The TPO would ensure that the benefits provided by the tree group, outlined above, will continue into the long term future to the benefit of the public, wildlife and landscape.

As well as providing significant public amenity, the TPO group was assessed as being under current foreseeable threats / risk, specifically:

1. A significant proportion of the trees in the group would require to be removed to facilitate development proposals detailed in the relevant planning application 22/00180/FUL for a commercial woodyard and the

erection of welfare and storage buildings with associated landscaping and car parking areas. This planning application was submitted 17 February 2022. In preparing comments for the Council's Development Management team DDDC's Trees and Landscape Officer felt that the development would necessitate significant harm to the tree group and significant harm to the amenity it provides to the public.

2. Use of the site in the locality of the proposed TPO group was perceived to be more intensive and more widespread than was observed on previous visits by Council officers. This raised concerns that the observed storage of materials and vehicles which appeared to be associated with the tenants business at the adjacent Ashleigh House has potential to cause harm to the trees forming the TPO group. This has foreseeable potential to lead to their death and subsequent removal. Without a TPO there would be no requirement for killed / removed trees to be replaced because the trees are not subject to any other statutory protection.
3. The TPO tree group is currently unprotected and could be removed without the need to obtain consent from the Council or Forestry Commission (assuming that the need for grant of a felling licence from the Forestry Commission was avoided, which it could easily be).

These points relating to amenity and threat were carefully considered and balanced against the impact of a new TPO on the land owner / tenant when the decision whether or not to make the new TPO was made. On balance it was felt that the reasons in support the making of a new TPO were sufficient to justify the making of the new TPO.

## **2.5 RELEVANT HISTORY**

Concerns for the trees subject to TPO 193 were initially raised when DDDC's Trees and Landscape Officer was asked to comment on a pre-application advice request in 2020 and raised concern over impact on the trees. Accordingly, at the time a new TPO was made (TPO 185), but this was not confirmed because no planning application was received so the threat to the trees was removed.

In February 2022 a planning application was submitted to DDDC with proposals to develop the site to the North of Ashleigh House for use by Thompsons Tree Services (application 22/00180/FUL for a commercial woodyard and the erection of welfare and storage buildings with associated landscaping and car parking areas). This application was refused planning permission for the following reasons in a decision notice dated 19<sup>th</sup> May 2022:

1. The proposed expansion of the existing business into protected woodland (TPO 193 (unconfirmed)) would result in the removal of attractive mature trees and likely pressure for future removal of further trees. This removal of trees in combination with the visibility of the new development would diminish the important contribution of the woodland in providing an attractive visual break to the west of Cromford Road to the detriment of local amenity, local landscape character and the setting of Wirksworth, contrary to Policies S4, PD1, PD5, PD6 and EC1 of the Adopted Derbyshire Dales Local Plan (2017) and guidance contained within the National Planning Policy Framework (2021).
2. Insufficient information has been submitted to demonstrate that the development achieves no net loss of biodiversity on the site. As such, without any overriding benefit, the development would fail to safeguard the intrinsic nature conservation value of the site and would be contrary to the aims of Policy PD3 of the Adopted Derbyshire Dales Local Plan (2017) and guidance contained within the National Planning Policy Framework (2021).

A site visit by DDDC's Trees and Landscape Officer was undertaken in early April 2022 to observe the trees and their surroundings, visually assess the condition of the trees and informally judge the contribution of the group to the character and appearance of the local landscape.

The Officer concluded that the amenity provided by the tree group was significant and sufficient to justify statutory protection through making a new TPO. The foreseeable threat to the tree group was also sufficient to justify making a new TPO.

An assessment of the groups amenity was also undertaken using the TEMPO system. The results of this assessment supported the Officers view that the making of a new TPO to protect the trees was justified.

DDDC uses a well-respected and widely used, published system called Tree Evaluation Method for Preservation Orders (TEMPO) developed by Forbes-Laird Arboricultural Consultancy. This is a system specifically designed to be used for assessing trees suitability for being made subject to new Tree Preservation Order.

TEMPO produces a figure for trees which relates directly to a scale with bands which define how suitable the assessed trees are to be made subject to a new Tree Preservation Order.

The tree group subject to Tree Preservation Order 193 was awarded a score above the TEMPO threshold score at which a new TPO is considered to be defensible. The

threshold score is 12. The possible range of scores is 0 to 25. The score awarded was 13.

The completed TEMPO form is appended to this report as Appendix 2.

Tree Preservation Order 193 must be confirmed before 14 October 2022 if it is to take permanent effect.

## **2.6 OBJECTIONS TO THE MAKING OF TREE PRESERVATION ORDER 193**

Two letters of objection were received within the consultation period:

1. **From Glyn Thomas of Cheshire Woodlands, acting as agent for Thompson Tree Services, dated 28 April 2022.** Thompson Tree Services are tenants of the land subject to TPO 193. His objection document is appended to this report as Appendix 3.
2. **From Carter Jonas acting as agent for Will Bridges of Tarmac, dated May 2022. Tarmac own the land subject to TPO 193.** The objection document is appended to this report as Appendix 4.

Their grounds for objection are summarised below with a response from DDDC's Trees and Landscape Officer for each.

### **2.6.1 Summary of points raised by the objection made on behalf of the tenant (Thompsons Tree Services) in the document prepared by their agent Cheshire Woodlands, and DDDC's responses.**

**Summarised objection comment 1.** TPO does not define number of trees of each species or their individual positions.

**Officer response.** In making a TPO for a group of trees within which all trees are to be subject to protection it is not necessary to plot the locations of every tree within the group so long as the boundary of the group is accurately mapped. In this case an accurate plan showing the boundary of the group to be protected was produced that enclosed the locations of all trees to be protected. All trees present within the plotted boundary at the time the TPO was made are to be protected whatever their species or location within the boundary.

**Summarised objection comment 2.** Reason for making the TPO 'to protect the amenity provided by the trees'. No mention of planning application 22/00180/FUL.

**Officer response.** It is the opinion of the Council that the tree group is under foreseeable threat considering previous planning applications for development at the site, including much of the tree group, and its current use for storing materials and vehicles associated with the business of the tenant.

**Summarised objection comment 3.** The suggestion that there is a foreseeable or perceived threat to the trees cannot be substantiated.

**Officer response.** That a foreseeable threat to the trees exists is evident from the planning application for development on the site including much of the tree group which necessitate removal of many of the trees in the group.

Perceived intensified use of land within the tree group for storage of materials and vehicles by the tenant Thompson Tree Services is also considered to represent a current threat to the trees.

**Summarised objection comment 4.** The trees are under good arboricultural management and are likely to remain so for the foreseeable future.

**Officer response.** This is debatable considering the perceived intensified storage of materials and vehicles on the site including within parts of the tree group.

**Summarised objection comment 5.** The client has no intention of removing any trees without the prior agreement of the Council.

**Officer response.** The tenant may indeed have no current intention of removing live healthy trees from the site other than as would be necessary to facilitate the proposed development. However, the fact that a planning application is was recently considered that would develop much of the area of the TPO tree group indicates the tenants and landowners willingness to remove trees to enable expansion of the tenants business premises and operations into the site containing the group. The proposals would, if granted consent, certainly result in removal of numerous trees from the TPO group. In the Councils view this would cause significant harm to the amenity the group currently provides. Furthermore, in the Councils view, the trees forming the group are currently at risk of harm resulting from the existing use of the site, including the area occupied by the tree group, for storage of materials and vehicles that could lead to tree deaths and hence their justified removal. There would be no requirement for them to be replaced unless a TPO is made because the trees are not currently subject to any other statutory protection.

**Summarised objection comment 6.** TEMPO score should be reduced to 11 because expediency assessment score should be 1 (precautionary only) not 3 (foreseeable threat).

**Officer response.** As described above the Councils view is that the tree group is currently under foreseeable threat as a result of the recent planning application and the land use within parts of the tree group.

**Summarised objection comment 7.** The TPO is not in accordance with current government guidance.

**Officer response.** It is the Councils view that the TPO is fully in accordance with current government guidance in all respects.

### **2.6.2 Summary of points raised by the objection made on behalf of the landowner (Tarmac) in the document prepared by their agent Carter Jonas, and DDDC's responses.**

**Summarised objection comment 1.** The trees identified in G1 do not meet the (TEMPO) score required for a defensible TPO.

**Officer response.** The TEMPO score sheet clearly allocated sufficient score to justify the making of a new TPO.

**Summarised objection comment 2.** Derbyshire Dales TPO No.185, 2020 was not confirmed and the site has not changed or altered since. Tarmac fails to see the justification of why another TPO No. 193, 2022 notice should be confirmed.

**Officer response.** TPO 185 was made in response to a pre-planning advice request in relation to potential development within the site containing the TPO group, causing a foreseeable threat to the trees forming the group at that time. A planning application was not forthcoming within the 6 months period that the TPO could have been confirmed and so the threat to the trees was reduced. Accordingly, the TPO was not considered necessary and so was not confirmed. The current TPO (number 193) was made in response to 2 currently foreseeable threats to the TPO group – the planning application which would have resulted in losses of many of the trees within the TPO group; and a perceived intensification of use of parts of the area occupied by the TPO group for storage of materials and vehicles associated with the tenants business activities overspilling from their adjacent business premises at Ashleigh House.

Without the new TPO there would be no requirement to protect the trees against harm. The perceived intensification of use of parts of the area occupied by the TPO group has potential to be harmful to the trees. This has created a foreseeable risk to the trees potentially resulting in their death and likely subsequent removal with no requirement to plant replacements.

**Summarised objection comment 3.** The mature ash trees have ash dieback and are highly unlikely to have a retention life span of more than 10 years. This would result in a TEMPO score of 0 for section B and if there is a 0 score the trees cannot qualify for section D other factors.

**Officer response.** The ash trees form part of the group. It is the group as a whole that is protected by the TPO, not individual trees. There is no disagreement that the ash are likely to die prematurely. However, when the ash do die then a TPO will give the Council the power to require that replacement trees are planted in their place which will ensure the continuation of the presence of trees on the site. This would not be enforceable if a TPO was not in force.



**Summarised objection comment 8.** The TEMPO visibility score should be lower as the mature ash that screen the site and clearly visible to the public adjacent Cromford Road and Ravenstor Road are unlikely to be there in 10 years. They all have ash dieback that will require remedial work to manage the risk that they pose to road users. Tarmac has a duty of care to ensure, as far as reasonably practicable, that trees within its ownership are unlikely to cause harm. As part of good arboricultural management remedial works will be required which is likely to consist of removal and replanting with another species, or as a minimum crown reduction with ongoing inspections.

**Officer response.** A TPO would not change or remove the duty of the landowner to ensure the safety of the trees growing on their land and would not burden the Council with this requirement. The landowners potential removal of diseased, dead or dangerous trees will be unchanged. What a TPO changes is the requirement for removed trees to be replaced. This duty would not exist if no TPO were to be in force at the site and so replacement of any removed trees would depend solely on the landowners opinion and desire, rather than statutory continuation of public amenity that is provided by a group of trees in the location.

### **3. LEGAL CONSIDERATIONS**

Tree Preservation Orders are made under sections 198, 201 and 203 of the Town and Country Planning Act 1990.

Section 198(1) of the Act states:

*'if it appears to a Local Authority that it is expedient in the interests of amenity to make provision for the preservation of trees or woodlands in their area, they may for that purpose make an Order with respect to such trees, groups of trees or woodland as may be specified in the Order.'*

Once the Tree Preservation Order is made, objections or representations may be made within a specified time period. The Local Planning Authority has 6 months from the date on which the Order was served to consider any objections or representations and to decide whether or not to confirm the Tree Preservation Order. The Order may be confirmed either with or without modification.

### **4. FINANCIAL CONSIDERATIONS**

None

### **5. OFFICER RECOMMENDATION**

Notwithstanding the comments of the objector, the analysis above has demonstrated that:

- the apparent overall fair structural and physiological condition of the group,
- appropriate native species mix of the group,
- the groups visibility to the public,
- the groups contribution to the character and appearance of the local landscape,
- the groups benefits to wildlife and biodiversity, and
- a current foreseeable threat to the continuing presence of the trees forming the group

together justify formal protection and accordingly that Derbyshire Dales District Council Tree Preservation Order 193 should be confirmed without modification.

Confirmation will ensure the appropriate future management of the trees at land North of Ashleigh House which have significant public amenity value as well as contributing to the character and appearance of the local landscape.

## **APPENDICES**

1. Tree Preservation Order Notice and associated plan for TPO 193.
2. Completed TEMPO form.
3. Objection from Glyn Thomas of Cheshire Woodlands, acting as agent for Thompson Tree Services, dated 28 April 2022.
4. Objection from Carter Jonas, acting as agent for Will Bridges of Tarmac, dated May 2022.