



Horsham
District
Council

**PLANNING
COMMITTEE
REPORT**

TO: Planning Committee South
BY: Head of Development
DATE: 17th September, 2019
SITE: Ash Wood, Star Road, Partridge Green.
WARD: Cowfold, Shermanbury and West Grinstead.
APPLICATION: Tree Preservation Order No. 1521.

REASON FOR INCLUSION ON AGENDA: Objection to a Tree Preservation Order.

RECOMMENDATION: To confirm Tree Preservation Order 1521 as served.

1. **THE PURPOSE OF THIS REPORT**

To consider whether Tree Preservation Order 1521 should be confirmed, as served.

DESCRIPTION OF THE ORDER

- 1.1 Provisional tree preservation order 1521, Ash Wood, Star Road, Partridge Green, was served on the 28th March 2019 on woodland under the provisions of the **Town and Country Planning (Tree Preservation) (England) Regulations (2012)**. Under these Regulations, the trees forming the woodland benefited from immediate protection.
- 1.2 The statutory consultation period for the receipt of representations has now expired, enabling the order to be confirmed.

DESCRIPTION OF THE SITE

- 1.3 The woodland is sited to the south-east of the village of Partridge Green, to the east of the Star Road industrial estate and south of the residential area of South Street and Hazelwood Road. The wood is roughly rectangular in shape, and almost 3 acres in square area.

2. **INTRODUCTION**

STATUTORY BACKGROUND

- 2.1 Section 198(1) of the **Town & Country Planning Act 1990** places an obligation on local planning authorities to make a TPO 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”.

- 2.2 TPO’s made in the past included the use of now outdated ‘area’ type orders. In respect of these, the Government’s publication **Planning Practice Guidance: Tree Preservation Orders and trees in conservation areas (2014)** states at para. 2.10 that Local Planning Authorities “*are encouraged to resurvey existing Orders which include the area category*”.

PLANNING HISTORY

- 2.3 On 7th November 1988 TPO/0632 was served upon two peripheral strips of Ash Wood along its western and northern boundaries. These strips, around 20m in width, were protected using the ‘area’ classification, protecting solely such trees as were present within the designated areas at that time. Under this type of order, no newly planted or recently self-established trees are protected. The two areas in question represented 32% of the woodland whole.
- 2.4 In January 2010 the woodland was formally included within the **Revision of the Ancient Woodland Inventory for West Sussex**.
- 2.5 The woodland has been included within a large parcel of land to the south-east of the village within the **SHELAA (Strategic Housing and Employment Land Availability Assessment)**, registered under reference: SA063, and last re-assessed in January 2019. At this stage the overall parcel of land has been classified as ‘developable’, the definition of this being stated by the Council as “*Reasonable prospect of development within 6 to 10 or 11 to 15 years (coloured yellow on the Parish Report maps)*”.
- 2.6 On 20th November 2018 an application was received for surgery works to 3 large trees on the northern boundary of the site. This was refused on 8th March 2019 as the works were considered to represent poor arboricultural practice.
- 2.7 On 28th March 2019, TPO/0632 was formally revoked on the same day as the serving of the TPO the subject of this report.

3. OUTCOME OF CONSULTATIONS

PUBLIC CONSULTATIONS

- 3.1 A letter of **objection** to the order has been received from an agent representing the owners of the woodland. The grounds stated in the objection are:
- i. That the woodland is not ‘of high merit’, as claimed:
 - a. the wood is an entirely typical example of an indifferent and under-managed mixed oak/ash woodland, with a variable hazel and Field maple understorey and patchy ground flora;
 - b. it has been adversely affected in quality by human activities within and around its boundaries;
 - c. notwithstanding its formal designation as Ancient Woodland, there is no evidence set out by the Council to substantiate the claim that the woodland is ‘of high merit’, or that this assessment has been reached in a structured or consistent way.

- ii. That the TPO represents an “*unnecessary additional layer of protection*”:
 - a. the imposition of the TPO on the wood confers no additional protection in planning terms beyond that from which it currently benefits as an Ancient Woodland site within the NPPF (National Planning Policy Framework);
 - b. as a ‘licensable’ site, the wood already benefits from protection afforded by the normal requirements for a Felling Licence under the Forestry Act 1967 (as amended);
 - c. the owners have no intention to propose development on or within the wood, the Council being unable to point to any evidence to the contrary;
 - d. the Government’s encouragement for local authorities to update old area TPO’s does not justify the expansion of the area protected under the original order to include the entire woodland.

- iii. That the TPO represents “*unnecessary additional obstruction to management*”:
 - a. the Government’s guidance advises that a woodland TPO “*should not hinder beneficial woodland management*”.
 - b. in conflict with this, the site owner will require engagement with, and in most cases approval from, the Council before they can proceed;
 - c. this makes the TPO unjustified, an additional obstruction to the landowner, to no obvious or demonstrable public purpose or benefit;
 - d. the landowner is concerned at the degree of risk he might be exposed to in regard to actions taken within the wood without authorisation by persons not within his control.

4. **HOW THE PROPOSED COURSE OF ACTION WILL PROMOTE HUMAN RIGHTS**

Article 8 (Right to respect of a Private and Family Life) of the Human Rights Act 1998 is relevant to this application. Human rights issues form part of the assessment below.

5. **ASSESSMENT**

- 5.1 Ash Wood is a tract of woodland of considerable age. Present on every edition of the Ordnance Survey back as far as 1875, it has been registered within the Revision of the Ancient Woodland Inventory for West Sussex (January 2010) as an area that is strongly likely to have been continuously wooded since 1600AD, this being the definition used by Natural England for inclusion within the register.

- 5.2 The majority of the trees on the site are young and semi-mature, together with a high number of older oaks suggesting deliberate stock planting around the end of the nineteenth century; there is a range of lapsed hazel coppice that looks to date from this era, also. No ancient or veteran trees have been found on the site, though this does not call into question the veneration of the soil structure and particular localised biosphere noted to be an “*irreplaceable habitat*” (Government guidance). Despite the name of the wood, ash is not the dominant species; and what ash there is appears to be infected by Chalara dieback.

- 5.3 The woodland finds itself at this time as under-managed and in poor condition. Natural regeneration levels are compromised, given the generally closed high canopy restricting light to the woodland floor; this is restricting and/or preventing the growth of the seed bank of woodland ground flora likely to be present within the soils. This is encouraging the growth of undesirable plants that are able to cope with the

low light levels, such as brambles and ivy, together with invasive plants – in particular laurel – which are causing further deterioration of the woodland.

- 5.4 Nonetheless, the area remains an important tract of woodland of ancient provenance, which management could readily improve, increasing the ecological habitat and the biodiversity in the locality. Providing a distinct transition between the village of Partridge Green to the north-west, and the open countryside to the south and east, it provides a background of green infrastructure in this otherwise heavily developed corner of the village. As well as being visible from the Star Road Industrial Estate to the immediate west, it is also visible from the residential areas to the north, of South Street and Hazelwood Road; it has a number of unofficial footpaths running through and across it, and a number of officially designated footpaths to its east and south.
- 5.5 The objector accedes that the woodland is “*undeniably visible*” from public viewpoints in its vicinity, but attests that this is in itself insufficient justification for a TPO; that little account appears to have been taken of its silvicultural composition or condition; and that there is no evidence that the Council has considered the merit of the woodland “*in a structured and consistent way*”.
- 5.6 Whilst accepting that the woodland is, at present, in poor condition, it remains not only of high amenity value to the public, but also most desirable to retain as a tract of ancient woodland. An assessment under **TEMPO** (*Tree Evaluation Method for Preservation Orders*) has been completed, and, despite the known deficiencies in this tool, a ‘score’ is arrived at from the survey data of 12, suggesting that the TPO is ‘defensible’.
- 5.7 The objector attests that, as formally registered Ancient Woodland, the area benefits from robust protection under the recently revised **NPPF** (*National Planning Policy Framework*). It is also pointed out that, as the area is defined as ‘licensable’, it is protected also by the requirement for a felling licence from the Forestry Commission. It is concluded from this that the imposition of a TPO on the wood “*confers no additional protection in planning terms*”.
- 5.8 However, whilst these assertions are correct, the conclusion does not take into account matters over and above the planning process. Although the Ancient Woodland status is a designation, it is not a constraint. The provisions in regard to ancient woodland have certainly been strengthened within the February 2019 edition of the NPPF, but these are only pertinent to planning matters – they have no effect on the retention or protection of an ancient woodland prior to the submission of any application for planning permission within, or adjacent to, such a site.
- 5.9 Despite the requirement to seek a licence for the felling of trees within the woodland, this ‘protection’ also offers a very low level of legal restriction upon it. Five cubic meters of timber may be removed under exemption every calendar quarter; a licence is only required for trees with a diameter at 1.3m from the ground in excess of 8cm (or 10cm in respect of thinnings); and no licence is required for any work save felling – lopping and topping are exempt.
- 5.10 It is attested that the Council “*has neither advanced, nor can point to, any evidence*” contrary to the assertion that the landowner has “*no intention to proposed development on or within Ash Wood*”. However, as noted in para. 2.5, above, the woodland has been included within the SHELAA assessment, and is presently classified as ‘developable’. Although this provides no compelling evidence that the site will be developed, it shows that this is within the contemplation of the landowner. Notwithstanding the objector’s assertion that this would likely be “*automatically*

refused” in regard to the restrictions on Ancient Woodland within the NPPF, this takes no account of the likelihood of the woodland being under threat from irresistible post development pressures following development of adjacent land – notwithstanding the requirement for a 15m buffer strip around the woodland periphery.

- 5.11 Following the Council’s consideration as to the updating of the original TPO on part of the site (dating from 1988), and the subsequent inclusion of the woodland in its entirety within the Revision of the Ancient Woodland Inventory for West Sussex, it is considered entirely reasonable to protect the woodland as a whole. Although it is true to attest that there is little perception of threat upon the wood at this time, TPO’s are commonly served and confirmed on a precautionary basis, in line with the ‘expediency’ test as set out within para. 10 of the government’s guidance at **Planning Practice Guidance: Tree Preservation Orders and trees in conservation areas (2014)**.
- 5.12 It is claimed also that the TPO is unjustified as being an additional obstruction to the landowner, requiring him to engage with, and seek consent from, the Council on all matters to do with the management of the woodland. It is true that under the government’s guidance a woodland TPO should “*not hinder beneficial woodland management*” – as the objector points out. However, under the same guidance, it is also stated that “*authorities can still encourage applications to manage the trees in ways that would benefit the woodland without making a serious impact on local amenity, for example by making a single application for regularly repeated operations*”. Members are also reminded that applications for works to protected trees and woodlands are free of charge.
- 5.13 It is also stated that the landowner is concerned at the degree of risk he might be exposed to in regard to actions taken within the wood without authorisation by persons not within his control. Whilst acknowledging these concerns – in particular regard to the presence of unauthorised footpaths through the wood regularly used by local people – it is not considered that this is reasonable justification not to confirm an order upon a woodland of high merit.

6. **RECOMMENDATIONS**

It is recommended that Tree Preservation Order 1521, Ash Wood, Star Road, Partridge Green, is confirmed as served.

Background Papers:

- Tree Preservation Order: 1521.

Contact Officer: **Will Jones**.