

**DEVELOPMENT CONTROL BOARD**  
**19<sup>th</sup> MAY 2022**

**TREE PRESERVATION ORDER NO: 2 2022 – Land Adjacent to Craylands Lane / adjacent to access to Swanscombe Heritage Park, Swanscombe**

WARD: Swanscombe

1. Summary

1.1 To seek authority to confirm a Tree Preservation Order.

2. RECOMMENDATION

2.1 That, for the reasons detailed in the report, The Borough of Dartford Tree Preservation Order No. 2 2022 – Swanscombe Centre Craylands Lane Swanscombe Kent, be confirmed.

3. Background and discussion

3.1 The group of trees in question are all located along a grass verge in-between the northern boundary of the adjacent SWCS car sales site and the access road leading to Swanscombe Heritage Park. The said group of trees comprises 19 Hornbeam trees, 6 Beech trees, 1 Lime tree and 1 Whitebeam tree (see Appendix A).

3.2 Land immediately to the south of the group of trees, has been most recently occupied by SWCS car sales and granted outline planning permission (reference DA/20/00816/OUT) for the erection of a 3 storey building to provide 5 No. 2 bedroom apartments with associated car parking and cycle storage provision. Matters relating to access, appearance, layout and scale were approved and only issues relating to landscaping were reserved for future consideration. It is important to note that condition 6 of the outline planning permission requires tree protection measures to be installed prior to commencement of work on site.

3.3 In light of the potential development of the adjacent SWCS car sales site, Swanscombe and Greenhithe Town Council has requested that the above-mentioned group of trees should be considered for protection under a Tree Preservation Order. The Town Council's interest in the land affected by the TPO is through an underlease and tenancy arrangement (of different parts of the land).

3.4 In response to this request, Officers instructed the Council's Tree Consultant to visit the site to assess the health, retention span, prominence and value of the trees as part of a Tree Evaluation Method for Preservation Orders (TEMPO) assessment. Photographs of the tree were taken from the surrounding area.

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3.5 A provisional tree preservation order (TPO) was made under TPO No.2 2022 on the 4<sup>th</sup> February 2022 covering 19 Hornbeam trees, 6 Beech trees, 1 Lime tree and 1 Whitebeam tree located along the grass verge in-between the northern boundary of the adjacent SWCS car sales site and the access road leading to Swanscombe Heritage Park. One letter of objection has been received from the owner of the adjacent SWCS car sales site to TPO No.2 2022 and as such, consideration of whether the TPO should be confirmed, is a matter for the Board.

4. Response from consultation

4.1 Notice of making the provisional TPO was served on those with an interest in the land. Notice was also served on the owners of the adjacent SWCS car sales site to the south of the trees in question. Submission of objections or other comments were required to be submitted to the Council by the 18th March 2022.

4.2 One objection was received from the owner of the adjacent SWCS car sales site, whose site is overhung by the branches of a number of the trees, which are the subject of this TPO. A summary of the comments is set out below:

- a) The imposition of the TPO would cause undue constraints on the ability of the owners of the car sales site to potentially sell the property on as an on-going concern.
- b) The proposed tree preservation order seriously affects the possibility of the approved outline housing scheme coming forward.
- c) The trees already overhang the car sales site and they are not fully mature yet.
- d) Beech trees root spread is shallow and makes them vulnerable to the elements. Should one of the trees fall it would seriously damage their property.
- e) The trees are not rare and are not particularly worthy of protection for their beauty or landscape contribution.
- f) They do not act as a screen for the adjacent car sales site.
- g) The trees are not maintained and the car sales owner has to cut them back each year to stop tree sap and / or bird droppings damaging cars stored at the car sales site. The tree preservation order would stop him being able to prune the said trees.
- h) The tree preservation order would have a serious affect upon the car sales business.
- i) Other trees further along the access to Swanscombe Heritage Park also been included within the tree preservation order.

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5. Consideration

- 5.1 National Planning Policy Guidance (NPPG) Note – Tree Preservation Orders and trees in a conservation area states that local planning authorities can make a Tree Preservation 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’. When deciding whether an Order is appropriate, authorities are advised to take into consideration what ‘amenity’ means in practice, what to take into account when assessing amenity value, what ‘expedient’ means in practice, what trees can be protected and how they can be identified.

Amenity

- 5.2 In terms of amenity, this term is not defined in law so 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 if potential works to the said trees or their actual 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.
- 5.3 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, taking into account visibility, individual, collective and wider impact and other factors such as nature conservation or response to climate change. Although the NPPG notes that the latter two considerations would not be sufficient on their own to warrant the making of an Order.
- 5.4 In terms of visibility, the trees form part of the verdant setting of the entrance to Swanscombe Heritage Park and the wider locality. The trees are very visible within the street scene and the public realm, and contribute significantly to the character and appearance of this urban area providing some soft relief and a break from development in Craylands Lane. If the trees were to be removed or their health harmed by way of excessive cutting back, it is my view that this would have a significant negative impact on the local environment and amenity.
- 5.5 The NPPG advises that public visibility alone will not be sufficient to warrant an Order. The particular importance of an individual tree or of groups of trees should be considered in detail by reference to its or their characteristics including: size and form; future potential as an amenity; rarity, cultural or historic value and contribution to, and relationship with, the landscape.

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- 5.6 The Council's Tree Consultant visited the land to provide arboricultural advice on the appropriateness of placing a TPO on these trees. He carried out a Tree Evaluation Method for Preservation Orders (TEMPO) assessment - a systematised assessment tool for TPO suitability. This assesses the trees against various criteria including: condition and suitability; retention span; relative public visibility; 'other factors' such as the collective value as a group of trees and lastly, expediency. The trees are scored against each of the criteria with an overall score giving a strong indication of whether the tree(s) are suitable for a TPO and what type – individual, group, area or woodland. An overall score of 12 or more would indicate that the trees are worthy of a TPO or TPO defensible, a score of 16 or more indicates that trees definitely merit a TPO. In this case, the TEMPO score for these trees was 15 indicating that placing a TPO on the said trees is definitely defensible.
- 5.7 The TEMPO assessment notes that the condition of the trees are fair / satisfactory with no major defects noted. The expected retention span of the trees are 20 - 40 years and it is noted, as set out above, that these medium / large sized trees are clearly visible to the public. In terms of expediency, which is explored in more detail below, the TEMPO assessment notes the perceived threat from works to the trees resulting from the outline planning permission for housing (reference DA/20/00816/OUT) at the adjacent SWCS car sales site. The Council's tree consultant advises that all of the trees are clearly visible in the public realm and their cohesive appearance provides an improved amenity to the locality. He considers that it is important that the trees are protected given the close proximity to the approved residential development to the south which may place increased pressure on significant works to the trees from future occupiers. The trees contribute to the setting of the entrance to Swanscombe Heritage Park and the wider locality and it is therefore within the public interest to control future tree works as it would benefit all users of the area to safeguard these trees from any works which may undermine their life expectancy. The Council's consultants concludes that the trees recommended to be protected have a significant positive impact on the character and appearance.
- 5.8 In summary in respect of amenity, it is my view that the trees contribute significantly to the character and appearance of the area to the benefit of the environment and the public. The trees are of sufficient health with a suitable retention span to clearly justify their preservation and there is a perceived threat to the health of the trees as a result of the potential re-development of the adjacent SWCS car sales site.

Expediency

- 5.9 In terms of expediency, the NPPG notes that although some trees or

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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. However, 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. However, it is not necessary for there to be immediate risk for there to be a need to protect trees. 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.

- 5.10 Although these trees do not lie within the adjacent SWCS car sales development site itself and are not situated on land that is owned by any future developer of the adjacent site, the majority of the trees do overhang the boundary and there might be pressure for works to the trees during construction and also post development works on the trees once the adjacent development is occupied. I am concerned that there is not robust enough protection for the trees now or in the long term. Up until now, the trees have not been under threat. However, the relative close proximity of the proposed development approved under application reference DA/20/00816/OUT to the trees presents a new risk to the trees which requires a greater degree of protection for the reasons set out above. The TPO will allow the Local Planning Authority to formally consider the appropriateness of any works in consultation with a qualified Tree Consultant, and the impact on the trees in perpetuity.
- 5.11 A TPO would allow the Local Planning Authority the opportunity to control the cutting back of any branches that hang over adjacent land. At this point, it is worth noting that the TPO does not prevent good arboricultural practices for the maintenance of the trees. Indeed the removal of dead wood and branches is exempt from the TPO and can therefore be carried out without first applying to the local planning authority, subject to a 5 day notice.
- 5.12 As such, it is considered that a TPO is the best way of protecting the trees from potential excessive cutting back that may harm the health of the trees. It will also act as a deterrent for any future works to the trees without Council consent.

Objections

- 5.13 The owner of the adjacent site has raised a number of concerns as set out above which I will address below.
- 5.14 The objector is concerned that the imposition of the TPO would cause

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undue constraints on the ability of the owners of the car sales site to potentially sell the property on as an on-going concern. As well as affecting the possibility of the approved outline housing scheme coming forward. For the reasons highlighted within this report I believe that the said trees provide an important contribution to the landscape and general amenity of the locality. I do not consider that the proposed TPO places overly onerous constraints on the occupiers of the adjacent car sales site. Rather, the imposition of the proposed TPO would simply provide the Council with the ability to ensure that good arboricultural practices are maintained in perpetuity in relation to the said trees. The grant of outline permission considered the impact of the proposed development on the trees and it was considered that the site could be developed in a way which would safeguard the trees. It is therefore not considered that a TPO would be an onerous constraint in this case.

- 5.15 The objector states that each year he has to prune branches back which overhang the car sales site. I would reiterate that the said order would not necessarily preclude such works in the future. It would however, provide the Council and the Council's tree consultant the opportunity to ensure that such works would not detrimentally affect the health and appearance of the said trees. I consider this element of control to be particularly important for any potential post development pressures, associated with the adjacent outline planning permission.
- 5.16 If the occupiers of the adjacent SWCS car sales site wish to apply to the local planning authority for works to the trees then they can do so, even if they are not the landowner. The process of applying to the Council (as local planning authority) is simple with no fee payable to the Council. TPO applications are usually processed within 6-8 weeks. The proposed works would be considered carefully by our Tree Consultant and the Planning Officer and if consent is given, the works can commence. In summary, this TPO would not prevent works to the trees as long as they do not harm the health of the trees or the amenity value of the area. Consequently, I do not consider that the TPO would harm the existing business or inhibit the implementation of the planning permission granted for the redevelopment of the SWCS car sales site.
- 5.17 The objector is also concerned that should one of the trees fall it would damage their property. I would note that the Council's tree consultant considers the health of the said trees to be satisfactory with no major defects noted. However, if for whatever reason the health or stability of the trees were to change in the future and they became dangerous, then the Tree Preservation Order would not prevent good arboricultural practices for the maintenance of the trees, or indeed their removal were they to become genuinely dangerous.

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5.18 As highlighted previously within this report, the expediency for the proposed Tree Preservation Order relates to the potential future development and post development pressures relating to the flatted residential scheme approved at the SWCS car sales site immediately adjacent to the said group of trees shown in Appendix A. Trees further to the west along the access road to Swanscombe Heritage Park abut a local allotment and are not under any potential or perceived threat in the near future. Therefore, there was no need to extend the proposed group of trees which form the proposed Tree Preservation Order.

6. Conclusions

6.1 A TPO is an appropriate way of ensuring that any works to the protected trees are monitored by the Council, to allow for a professional and objective opinion on the works requested and to ensure that any work undertaken to a tree is acceptable from an arboricultural point of view. This can also ensure that there would be no detrimental impact on the long term health of the trees or their visual amenity value, taking into account any health and safety issues.

6.2 Without the protection of the TPO the trees could be removed at any time and/or works carried out to the tree that may have a harmful effect on their health. I am therefore of the opinion that the TPO should be confirmed for the wider public benefit.

7. Relationship to the Corporate Plan

7.1 Not applicable.

8. Financial, legal, staffing and other administrative implications and risk assessments

**HUMAN RIGHTS IMPLICATIONS**

I have considered the application in the light of the Human Rights Act 1998. I am satisfied that my analysis of the issues in this case and my consequent recommendation are compatible with the Act.

Financial Implications	None
Legal Implications	The confirmation of the TPO can be challenged in the High Court (within 6 weeks of the notice of confirmation), under section 288 of the Town and Country Planning Act 1990. On the grounds that the TPO is not within the powers of the Town and Country Planning Act 1990 or the requirements of the 1990 Act or

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	Town and Country Planning (Tree Preservation)(England) Regulations 2012 have not been met.
Staffing Implications	None
Administrative Implications	None
Risk Assessment	No uncertainties and/or constraints

9. Appendices

9.1 Appendix A – TPO Plan.

BACKGROUND PAPERS

<u>Document</u>	<u>Date</u>	<u>File Ref</u>	<u>Report</u> <u>Author</u>	<u>Section and</u> <u>Directorate</u>	<u>Exempt</u> <u>Information</u> <u>Category</u>
s consulted Application File	3 May 2022	TPO No. 2 2022	Matthew Apperley 01322 343051	Development Management Planning Services	N/A