

North East Derbyshire District Council

Planning Committee

19th October 2021

Tree Preservation Orders 280, 281, 282 and 283 – Areas of trees and Woodland at Ashover.

Report No PM/04/21-22/AK of the Planning Manager (Development Management)

This report is public.

Purpose of the Report

- To advise Planning Committee of the making, provisionally, of Tree Preservation Orders No.280, 281, 282 and 283 on various areas of trees and a woodland at Ashover.
- To advise Planning Committee of the receipt of objections in respect of the making and/or potential confirmation of the 4 Orders.
- To allow Planning Committee, as required, to determine if the provisional Orders should be confirmed/not confirmed or confirmed in an amended, modified form.

1 Report Details

- 1.1 Members may recall that an Interim Tree Preservation Order (TPO) has historically been relied upon to protect a large number of trees on an area of land west of Ashover. This was Ashover Interim Tree Preservation Order No.1 and covered land stretching from Ashover west to Kelstedge.
- 1.2 The TPO was made as an “area” Order in 1944. As time has passed it has become increasingly difficult to rely on its provisions as, being an area order, only those trees in place at the time the Order was made were protected. It became more and more difficult to prove a tree(s) was in place up to 75 years ago and so protected. Effectively, this made the Order unenforceable.
- 1.3 Certain portions of the land have been resurveyed over time and replacement TPOs made but earlier this year the decision was taken to make provisional Orders to cover the other trees within the area and so supercede TPO1 altogether.
- 1.4 The Orders made were TPO's 280, 281, 282 and 283, as set out below as Figures 1 to 4. TPO 280 (a single area) relates to land at The Bourne, Moor Road, TPO 281 (a single area) on land west of Ashover bordered by Narrowleys Lane and Moor Road, TPO 282 on a woodland east of Kelstedge and TPO 283 (a single area) on trees along the roadside of Cripton Lane and Bath Lane.

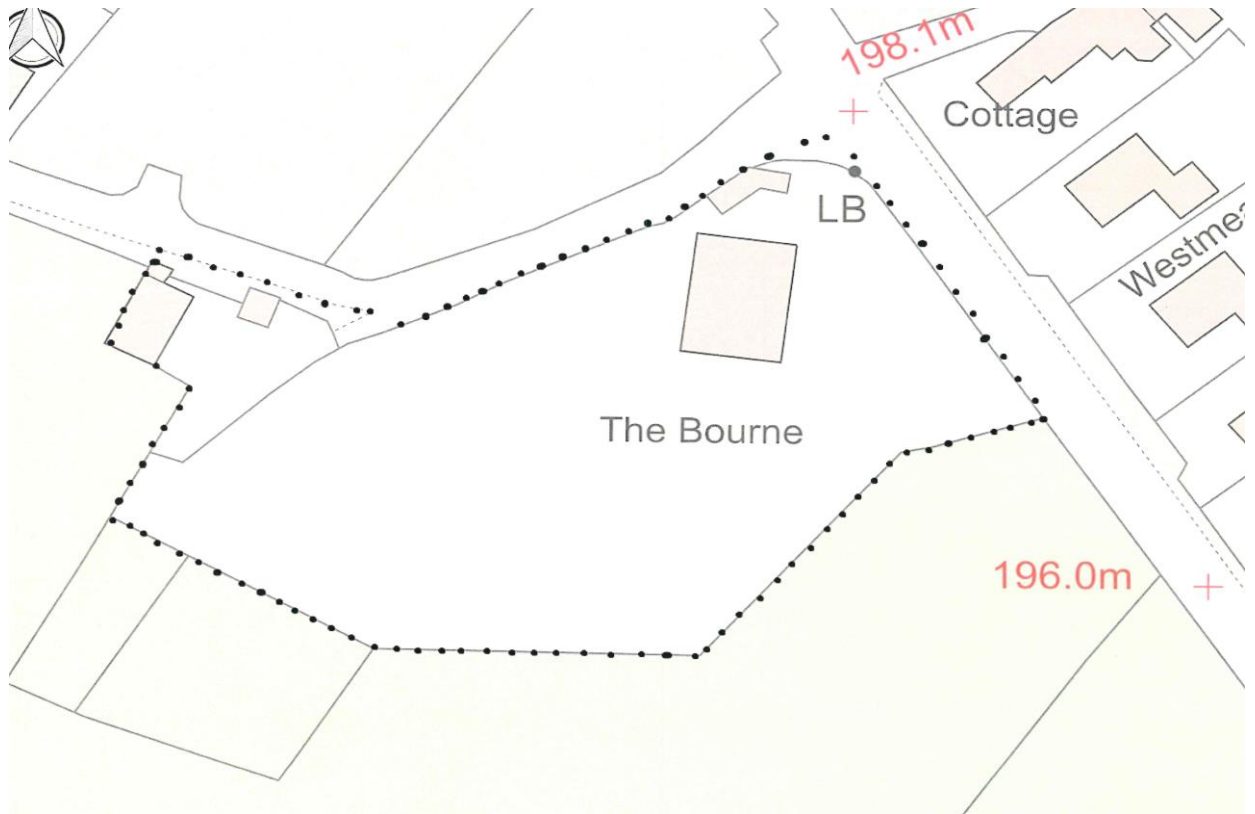


Fig 1: TPO 280: Trees at The Bourne



Fig 2: TPO 281: Trees west of Ashover

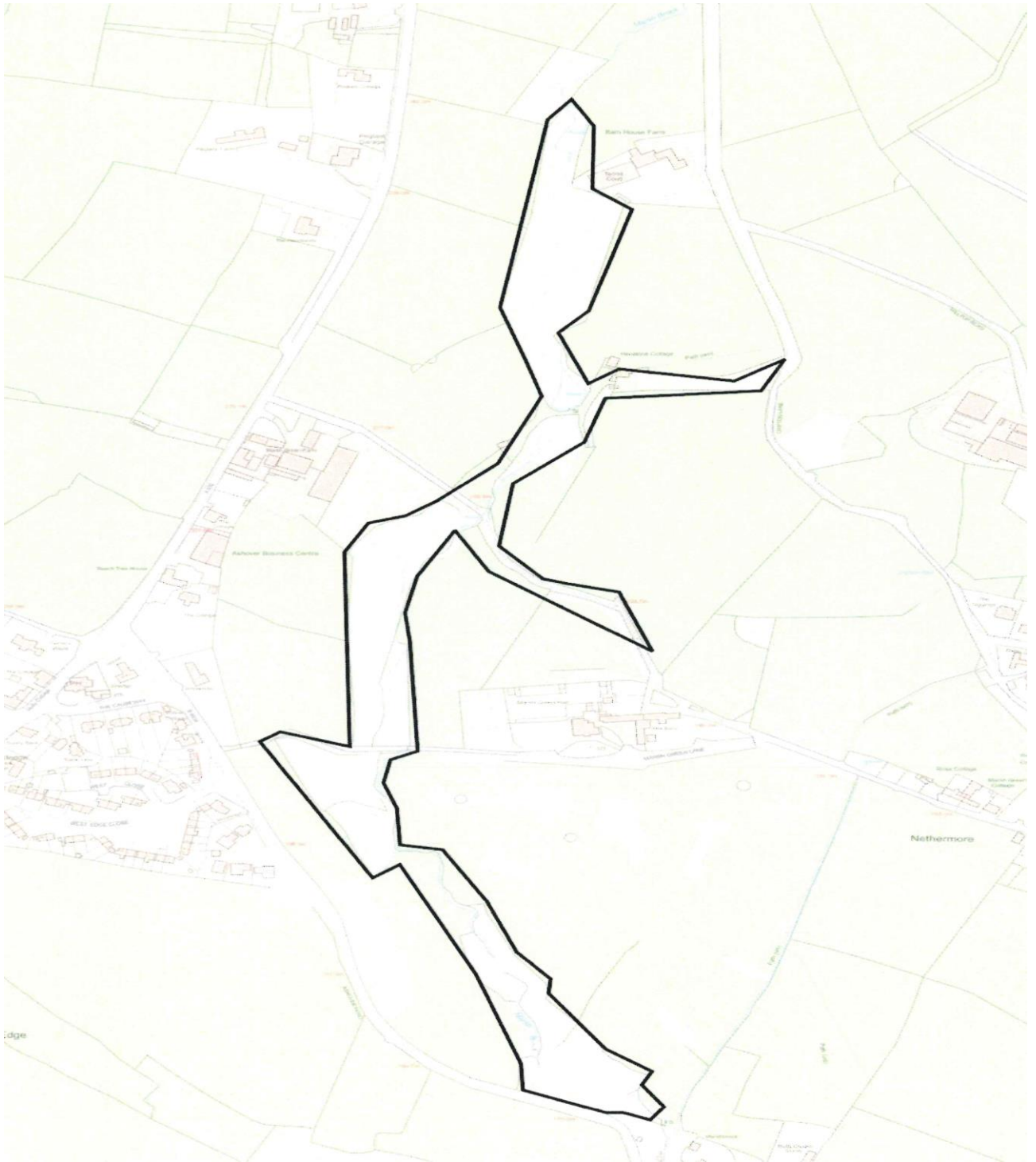


Fig 3: TPO 282: Marsh Brook Woodland

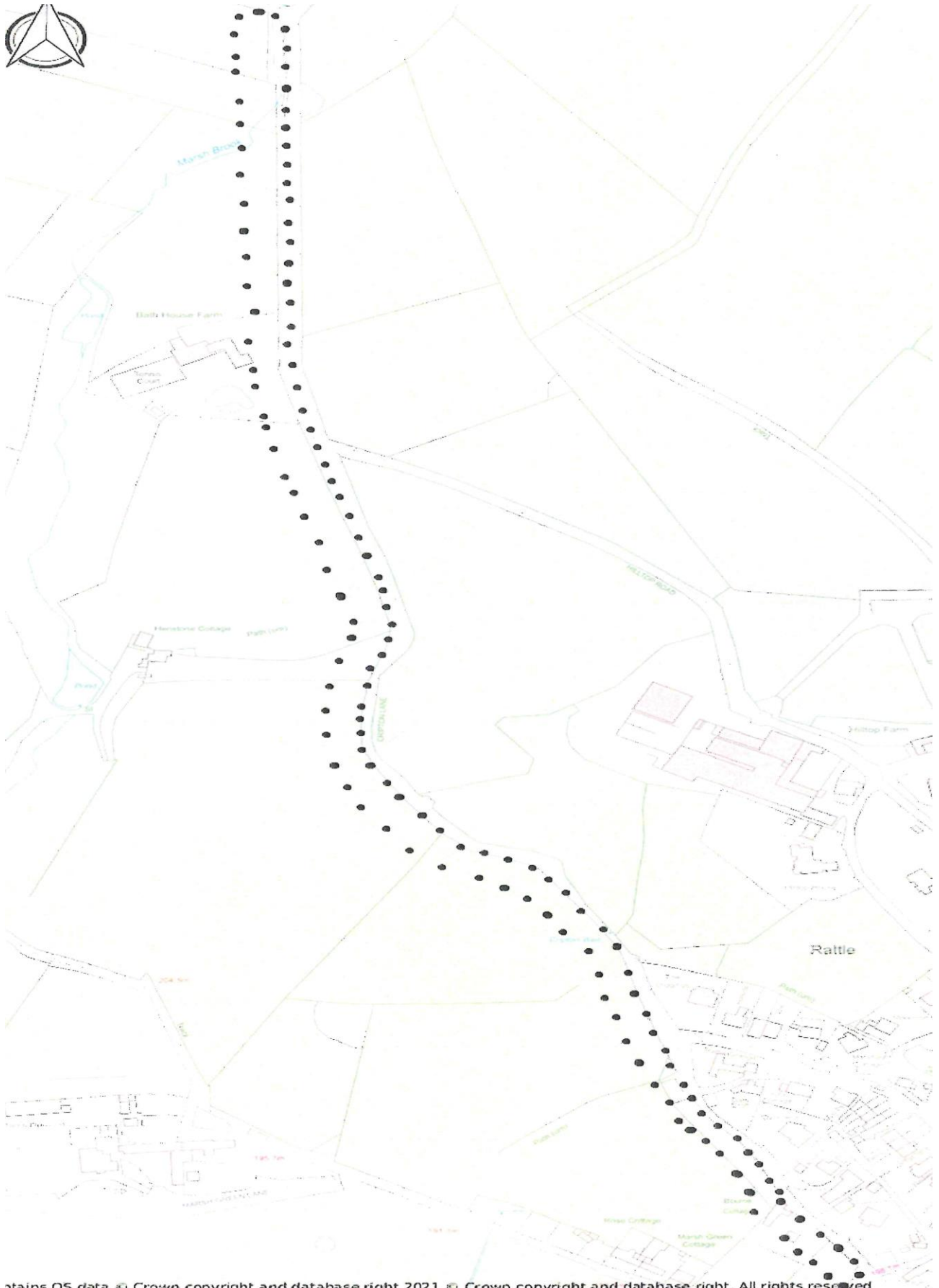


Fig 4: TPO 283: Trees on Cripton Lane and Bath Lane

- 1.5 The trees are considered to offer significant level of amenity to the area but the overriding issue, Officers consider, is that the trees merit ongoing protection due to the long term protection they have received to this point and the public perception of that protection.
- 1.6 Subsequent to the making of the Order, representations have been received from a significant number of parties to all 4 provisional TPOs as follows:

In respect of provisional TPO's 280 and 281:

The site owner has approved development at the rear of the site, and it has been shown that development can take place while protecting the trees. The provisional TPOs have been assessed by an arboricultural consultant who considers them inappropriate for this site and on the adjoining land as several of the trees in the newly designated area were in fact diseased or at significant risk of failure. The area designation covers all trees present in the defined area at the time that the Order was served, yet any appropriate system of amenity evaluation would show some significantly defective trees lack the necessary merit for inclusion in a TPO. The TPO is objected to on the grounds that they include trees whose amenity value has not been correctly assessed.

In respect of provisional TPO 282:

- A. The status of Interim TPO No.1 is questioned.
- B. Is this new TPO a Council initiative or a request from a third party?
- C. What was the Council's method for assessing the amenity value of the trees? What were the scoring criterion?
- D. What other of the many woodlands around Ashover have been protected based on similar scoring mechanisms.
- E. Why is this woodland exceptional and what sets it aside from the other woodlands nearby (particularly those with footpaths within them)? Can a plan of other protected woodlands be provided?
- F. The woodland subject of the Order is a private woodland with no public right of way and not a public amenity area. Four separate woodlands are incorporated into the one order. It is important each is assessed differently.
- G. Who visited the woodland and inspected them? A copy of the report is requested.
- H. The current plan does not accurately define the woodlands and seeks to protect land outside those boundaries. An objection is made to the Order on the basis of inaccurate boundaries.
- I. If any further visit is made the owner requests to attend.
- J. How is any decision to confirm the Order taken? Is a report viewable and can a copy of the original report be provided?

In respect of provisional TPO 281 and 283:

Many of the queries in respect of TPO's 281 and 283 are consistent with those made in respect of TPO 282 (see above) but the specific points raised are as follows:

- A. Can a copy of the Council's assessment method be provided and the scoring criterion that resulted be provided.
- B. What other trees in the locality have been protected in the locality?
- C. Why are these trees considered exceptional, warranting protection, as opposed to others which are not protected?
- D. Who visited the trees and inspected them. Can a copy of the report be provided that led to the Order being made?
- E. The TPO is objected to as the plans do not accurately define the boundaries or location of the trees.
- F. In respect of TPO 283 a line of dots appears which are not representative of the location of trees.
- G. In respect of TPO 281 the area of land is incorrectly defined.
- H. If a further site visit is required the owner would wish to attend.
- I. What other TPO's are proposed in the TPO process?
- J. Can a copy of the Officer report to Cabinet be provided?
- K. The plan in respect of TPO 281 does not include the land surrounding The Bourne. Has a separate Order been made in respect of that?

1.7 A tree preservation order is normally made to protect trees in the interests of amenity and this normally involves an assessment of the trees visibility, impact (including the contribution to the wider landscape) and the trees size and form. Before confirming an Order the Council should satisfy itself that the tree(s) would bring a reasonable degree of public benefit in the present or future. Amenity comprises the visibility of the trees, their individual or collective impact as well as other factors such as the trees importance to nature conservation and/or any response to climate change.

1.8 In all 4 cases referred to here, as set out above, Officers take the view that the trees do offer a significant level of amenity to the area when taken together with the other trees/woodland in the vicinity. The trees are readily visible from and along the public road and footpath network and so offer excellent amenity value. The trees have been assessed as such by Officers using a scoring mechanism offering an element of objectivity to that assessment but perhaps most importantly in this case, the trees have been protected over the long term by Interim TPO No.1 and Officers consider the ongoing protection of the trees is in the public interest and continues the protection offered the trees and relied on over the long term by the local community. This alone in this case is, in the view of Officers, sufficient to formally protect the trees.

1.9 The comments made in respect of TPOs 280 and 281 are noted. However, any permission granted for development overrides a TPO where the removal of any tree(s) is essential to allow the approved development to go ahead. The confirmation of the Orders in that respect does not prevent acceptable development proceeding. In addition, where trees are in exempt categories a TPO does not prevent work being undertaken. In time, it will be preferable to work to individually categorise trees and undertake a more detailed survey, but in the short term Officers believe an area TPO is the most effective way of affording ongoing protection of the trees in question.

1.10 In respect of the objections received on TPOs 281, 282 and 283, these all fall within a single ownership. Two "area" Orders and one "woodland" Order have been provisionally made. Subsequently some work has been undertaken to secure an

agreed form of Order(s) with the land owner, who has been proactive in cooperating with Officers, by individually assessing the trees set out in the two area orders and to map as the owner would wish the woodland Order. It is understood that generally he is not opposed to the trees being protected but he wishes to see that in a more structured form. However, time has not allowed all that work to be completed and so Officers consider that a confirmation of the Orders as originally made will afford ongoing interim protection but allow the opportunity to finalise the work with the owner as soon as possible thereafter (potentially then resulting in a further new order(s) being made). If progress can be made on this prior to the Committee meeting, Members will be updated as to progress then.

- 1.11 Many of the other points made are questioning the procedures used to make the various Orders. Members can be assured that the impetus for making the various Orders comes, in this case, from Officers seeking to secure the proper long term ongoing protection of the trees and that assessments have been undertaken to satisfy the Council the trees merit protection. It is accepted that the trees covered by these 4 Orders, in many respects, are of no greater amenity value than many others in the vicinity of Ashover, however, the trees in question have been protected over the long term by Interim TPO No.1 and so there is a public perception they are protected and, in making these Orders, the Council would acknowledge that.

2 Conclusions and Reasons for Recommendation

- 2.1 Officers believe there is a wider public desire to afford ongoing protection of the trees but also note the comments made objecting to the Order.
- 2.2 Officers consider that the trees, the three areas and one woodland, the subject of the TPOs, overall, play an important role in the amenity to the area, albeit in conjunction with other both protected and non-protected trees and areas of woodland in the locality. They will also benefit the varied ecology of the area.
- 2.3 Officers also note that the making of TPOs does not necessarily prevent works being undertaken to trees, otherwise protected, and, in some cases, their removal, where appropriate. In addition, a management plan can be agreed under the provisions of an application to undertake ongoing work to the trees in the case of the woodland TPO.
- 2.4 On that basis Officers conclude that the trees should all be protected by formal Order as provisionally proposed.
- 2.5 In the case of all the Orders it would be preferable to have undertaken more detailed surveys of the trees and their extent further to the provisional Orders being made. In the case of TPOs 281 and 283 some further work has been done but has yet to be finalised. In respect of TPO 282 it has not been possible as yet to agree the exact extent of the woodland. No further work has been possible in respect of TPO 280.
- 2.6 Therefore, it is concluded that all 4 TPOs should be confirmed as provisionally made, except and unless any further work can be undertaken prior to the 6 month deadline to confirm the Order is reached, as set out above.

3 Consultation and Equality Impact

3.1 The owners of the trees and other interested parties have been consulted as part of the process undertaken in making the Order.

4 Alternative Options and Reasons for Rejection

4.1 There is the alternative option to not confirm the Orders or to modify them. However, for the reasons set out above, neither of these options is considered appropriate in this case.

5 Implications

5.1 Finance and Risk Implications

5.1.1 There is no financial or other risk from the confirmation of the Order as the option remains for the tree owners to make application to seek to undertake works to or remove trees.

5.2 Legal Implications including Data Protection

5.2.1 All proper legal processes have been followed with the land owners advised of the making of the provisional Orders and opportunity given for comments to be made (see above).

5.2.2 The provisional TPOs have to be confirmed within 6 months from their making, i.e. the 26th October, to retain effect. Any failure to confirm the orders within that time would mean they no longer have effect and any protection is lost.

5.3 Human Resources Implications

5.3.1 None.

6 Recommendations

6.1 That Tree Preservation Orders 280, 281, 282 and 283 are all confirmed unmodified with delegated powers granted to the Planning Manager (Development Management), in consultation with the Chair and Vice Chair of the Planning Committee to confirm them in any otherwise modified form as appropriate, as set out in the report, ahead of the 26th October deadline.

7 Decision Information

<p>Is the decision a Key Decision? A Key Decision is an executive decision which has a significant impact on two or more District wards or which results in income or expenditure to the Council above the following thresholds: <i>BDC: Revenue - £75,000</i> <input type="checkbox"/> <i>Capital - £150,000</i> <input type="checkbox"/></p>	No
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NEDDC: Revenue - £100,000 <input type="checkbox"/> Capital - £250,000 <input type="checkbox"/> <input checked="" type="checkbox"/> Please indicate which threshold applies	
Is the decision subject to Call-In? (Only Key Decisions are subject to Call-In)	No
Has the relevant Portfolio Holder been informed	No
District Wards Affected	Ashover
Links to Corporate Plan priorities or Policy Framework	All

8 Document Information

Appendix No	Title
Background Papers (These are unpublished works which have been relied on to a material extent when preparing the report. They must be listed in the section below. If the report is going to Cabinet (NEDDC) or Executive (BDC) you must provide copies of the background papers)	
Report Author	Contact Number
Adrian Kirkham (DM)	(01246)217591