

North East Derbyshire District Council

Planning Committee

3 October 2023

**PROPOSED CONFIRMATION OF TREE PRESERVATION ORDER (TPO
293/2023) Trees at Clifton Court, Dronfield Woodhouse, Dronfield.**

Report of the Planning Policy & Environment Manager

Classification: This report is public

Report By: Principal Arboricultural Officer (Planning)

Contact Officer: David Cunningham

PURPOSE / SUMMARY

- Tree Preservation Order 293 was made in its provisional form on 5 June 2023. The effect is that the Order applies for six months or until confirmed or modified.
 - Before deciding to confirm an Order, the local authority must take into account all 'duly made' objections and representations that have not been withdrawn.
 - Two objections have been received.
 - One letter of support from neighbouring residents has been received.
 - The Council's Principal Arboricultural Officer (Tree Officer) believes that there is a perceived threat to trees at Clifton Court. This would likely result in the loss of trees should TPO 293 not be confirmed with modifications in the interests of amenity.
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RECOMMENDATIONS

1. To confirm TPO 293/2023, Trees at Clifton Court, Dronfield Woodhouse, Dronfield subject to modification.

Approved by the Portfolio Holder – Cllr Pickering, Cabinet Member for Planning & Environment

IMPLICATIONS

Finance and Risk: Yes No

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

On Behalf of the Section 151 Officer

Legal (including Data Protection): Yes No

Details: All proper legal processes have been followed, the landowners have been advised of the making of the provisional Orders and given the opportunity to make comments. Provisional TPOs must be confirmed within 6 months of their making, to retain effect. Failure to confirm the orders within that time would mean they no longer have effect and any protection is lost.

On Behalf of the Solicitor to the Council

Staffing: Yes No

Details: There are no significant implications on staffing resources arising from the action recommended in this report

On behalf of the Head of Paid Service

DECISION INFORMATION

Decision Information	
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: NEDDC: Revenue - £100,000 <input type="checkbox"/> Capital - £250,000 <input type="checkbox"/> <input checked="" type="checkbox"/> <i>Please indicate which threshold applies</i>	No
Is the decision subject to Call-In? (Only Key Decisions are subject to Call-In)	No
District Wards Significantly Affected	None
Consultation: Leader / Deputy Leader <input type="checkbox"/> Cabinet <input type="checkbox"/> SMT <input type="checkbox"/> Relevant Service Manager <input checked="" type="checkbox"/> Members <input type="checkbox"/> Public <input type="checkbox"/> Other <input checked="" type="checkbox"/>	Yes Details: Affected land owners have been consulted in line with legislation.
Links to Council Plan (NED) priorities, including Climate Change, Equalities, and Economics and Health implications.	
(A) A Great Place that Cares for the Environment (C) A Great Place to Live Well	

REPORT DETAILS

1 Background

- 1.1 The Council's Tree Officer undertook an inspection of trees at Clifton Court, Dronfield Woodhouse on 30th May 2023. This was in response to concerns raised by a member of the public, that the trees were under immediate threat of removal. The inspection was undertaken from the public domain along Northern Common and Public Footpath NE7/1/1.
- 1.2 Section 198 of The Town and Country Planning Act 1990 affords the power for a local authority to make a TPO where it appears to the authority that it is expedient in the interests of amenity to make provision for the preservation of trees or woodlands in its area.
- 1.3 An Area Tree Preservation Order (TPO 293) protecting all trees which were growing at Clifton Court at the time the Order was served was made on 5th June 2023 (Figure 1). The effect is that the Order applies for six months or until confirmed or modified.

2 Details of Proposal or Information

- 2.1 Clifton Court is a recent development, having received Planning Permission in 2019 (19/00679/FL) for the demolition of the previous two-story house and the subsequent erection of four new dwellings. Clifton Court is located off Northern Common (B6054), south of Mickley. Clifton Court comprises of 4 individual dwellings positioned around a private drive. Access is gained to Clifton Court directly from Northern Common. Immediately north are five residential properties which are set back from Northern Common and are served off a private driveway. The land to the east and south of Clifton Court is agricultural land belonging to Dunston and Moorview Farms. The rear gardens of two properties within Clifton Court lie within the North East Derbyshire Green Belt. Mature trees form part of the property boundary around Clifton Court along with hedgerows, and these trees can be seen from Northern Common, particularly when travelling north from Dronfield Woodhouse. Trees at the rear of Clifton Court can be seen between gaps of hedging along Footpath NE7/1/1 and provide screening of the development. Young trees which were planted as part of the development of Clifton Court are a feature of the front gardens at Clifton Court and can only be seen from the private drive.
- 2.2 An Area Tree Preservation Order is a way of specifying and protecting scattered individual trees and is particularly useful as an interim measure, enabling the immediate protection of a range of trees pending more detailed analysis. However, the Area classification of Order has drawbacks. Firstly, it is possible to include trees within the Order that do not merit protection. Secondly, the Order only protects those trees standing at the time the Order was made. Over time, as new trees are planted or grow within the area, it may become difficult to say with certainty which trees are actually protected. In the Secretary of State's view, the Area classification should only be used in emergencies, and then only as a temporary measure until the trees in the Area can be assessed properly and reclassified.

- 2.3 The Council's Tree Officer undertook a detailed assessment of trees on 5th September 2023 and identified four trees as merit worthy of protection by TPO 293 (Figure 2). These trees are T1 Copper Beech, T2 Common Beech, T3 Common Lime and T4 Common Lime (Figures 3 & 4). T1 and T2 are located on the southern boundary of 3 Clifton Court. T3 and T4 are located in the rear garden of 4 Clifton Court. The inclusion of T1 is contested and a duly made objection was received over the inclusion of T1 within TPO 293.
- 2.4 The Council's Tree Officer did not consider the young trees recently planted in the front gardens of properties which were planted as part of the Clifton Court development suitable for TPO protection, as these trees are not visible from the public domain. These young trees also remain protected by condition 8 of planning permission 19/00679/FL. Hedgerows were not included as TPO protection cannot extend to protecting hedges. A number of mature trees were not included, and these are discussed in detail at paragraph 4.8 of this report.



Figure 1: TPO 293 in its provisional form before modification and protecting all trees within the area described as A1 within the First Schedule of the Order



Figure 2: Proposed modifications to TPO 293 which limits protection to 4 individually identified trees considered merit worthy of TPO protection by the Council's Tree Officer.



Figure 3: T1 Copper Beech and T2 Common Beech when viewed from Northern Common, south of Clifton Court.



Figure 4: T3 and T4, both Common Limes and located in the rear garden of 4 Clifton Court.

3 Representations

- 3.1 A Representation has been received from AWA Tree Consultants acting on behalf of the residents of 4 Clifton Court raising the following **Objection**:
- The Copper Beech (T1) on the southern boundary of Clifton Court should not be included as the tree scores low using the TEMPO system and the tree does not merit TPO.
- 3.2 The following comments of **Support** have been received from 4 neighbouring residents at Northern Common:
- The trees make a significant contribution to the amenity value and natural appearance of the area.
 - The Arboricultural Report submitted in support of 19/00679/FL did not deem it necessary to remove any of the existing and mature trees from this site.
 - Without continued protection there remains risk of losing mature trees from the site.

4 Officer Response

- 4.1 TPO 293 Trees at Clifton Court, Dronfield Woodhouse, was created as an emergency response to prevent the felling of mature trees at Clifton Court. As such, the Order was classified as an Area Order as a temporary measure until a time when the Council's Tree Officer could properly assess the quality of trees on the site. The Council Tree Officer undertook a detailed assessment of trees at Clifton Court on 5th September 2023.
- 4.2 Comments of objection were received from the residents of 4 Clifton Court, who also instructed an Arboricultural Consultant to provide written representations on their behalf to the making of TPO 293. Of the four suggested trees deemed suitable for protection by the Council's Tree Officer, only the inclusion of T1 within the modified TPO 293 is contested by these objections. There has been no duly made objection to the inclusion of T2, T3 and T4 within the modified TPO 293.
- 4.4 T1 is an early-mature Copper Beech located on the southern boundary of Clifton Court. The objecting Arboricultural Consultant has stated that T1 does not merit inclusion in TPO 293 as it has scored low using the TEMPO methodology. The supporting notes for this tree within the tree schedule of the Consultant's report add that this tree has an unbalanced crown, is likely to outgrow its location and the dense and dark foliage will overhang the property. The Consultant has estimated the remaining retention span of T1 to be no more than 40 years.
- 4.5 TEMPO is a field guide to TPO decision making and is a quick and easy means of systematically assessing the suitability of trees for statutory protection. However, TEMPO does omit key considerations when assessing the amenity

value of a tree. TEMPO does not consider the value of screening, unless it is a formally planted screen, and TEMPO does not include the future potential of amenity, which is a consideration specifically mentioned within the Government Guidance Notes for Tree Preservation Orders and trees in conservation areas.

- 4.6 The 2019 Arboricultural Report submitted in support of Planning Application 19/00679/FL described T1 as a *'good Copper Beech tree with much future potential'* and identified the physiological and structural condition of the tree as *'Good'*. This report estimated the remaining contribution in years of this tree to be in excess of 40 years. The 2019 Arboricultural Report described both the Copper Beech (T1) and the adjacent Common Beech (T2) as prominent trees and recommended their retention. The Planning Officer's Report in response to Planning Application 19/00679/FL makes particular mention of the substantial hedgerows and trees along the site boundaries and how these lessen the impact of the development from public viewpoints.
- 4.7 It is the Council Tree Officer's opinion that T1 continues to make a positive contribution to lessening the impact of the development at Clifton Court by softening the hard forms of the buildings and providing visual screening for the Green Belt. T1 has future potential in excess of 40 years and its contribution to amenity shall increase as the tree grows. It is the Council Tree Officer's opinion that T1 should have scored equally to T2 within the TEMPO methodology and that TPO protection for T1 is defensible. The unbalanced crown as described within the objection appears to be a result of recent pruning to reshape the canopy of T1 to reduce the overhang of this tree across the rear garden of 3 Clifton Court. These pruning works have not reduced the amenity value of the tree when viewed from Northern Common. The objecting comments relating to dark foliage overhanging the property appear unfounded as pruning to remove the overhang has already been undertaken to reduce the canopy of the tree back to the garden fence line, and this can be repeated, when necessary, should the canopy of the tree begin to encroach again in the future.
- 4.8 Although representations supporting the protection of mature trees were received from the neighbouring residents at Northern Common, the Council's Tree Officer considered several mature trees unsuitable for continued TPO protection. It was decided to not include the two mature Ash trees located in the rear garden of 4 Clifton Court, as these are both considered of poor form and condition, having been recently 'topped' and a substantial cavity forming at the base of one. The Ash and Holly trees at the access to Clifton Court were also not included as these both are of poor form and limited amenity value.

5 Reasons for Recommendation

- 5.1 A tree preservation order is normally made to protect trees in the interests of amenity and this 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. In this case officers consider that the trees offer a significant level of amenity to the area and are readily visible from public viewpoints along the highway and along

public footpaths. The trees have been assessed by the Council's Tree Officer and have been found to be healthy and maturing trees merit worthy of the special protection afforded by TPO in the interests of amenity.

5.2 A local authority may make a TPO where it appears to the authority that it is expedient in the interests of amenity. Intentions to fell trees are not always known in advance and Government Guidance advises it may sometimes be appropriate to proactively make Orders as a precaution. The residents of Northern Common perceive a risk of losing mature trees from this location which increases the protection imperative above the level of precaution alone.

6 Alternative Options and Reasons for Rejection

6.1 To decide to not make the TPO. This option was rejected because it would leave trees unprotected and could lead to trees being removed which would be detrimental to local amenity.

DOCUMENT INFORMATION

Appendix No	Title
N/A	
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 you must provide copies of the background papers)	
None	