

**North East Derbyshire District Council**

**Planning Committee**

**14 January 2025**

**PROPOSED CONFIRMATION OF TREE PRESERVATION ORDER (TPO 302/2024) The Trees on Land South of Hallfieldgate Lane, Shirland**

**Report of the Planning Policy & Environment Manager**

Classification: This report is public

Report By: Principal Arboricultural Officer (Planning)

Contact Officer: David Cunningham

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**PURPOSE / SUMMARY**

- Tree Preservation Order 302 was made in its provisional form on 22<sup>nd</sup> August 2024. 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an Order, the local authority must take into account all duly made objections and representations that have not been withdrawn.
- One duly made objection has been received.
- No representations of support have been received.
- The Council's Principal Arboricultural Officer believes that there is a foreseeable threat to trees on land south of Hallfieldgate Lane. This would likely result in the loss of trees should TPO 302 not be confirmed in the interests of amenity.

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**RECOMMENDATIONS**

1. To confirm TPO302/2024 The Trees on Land South of Hallfieldgate Lane, Shirland without modification.

**IMPLICATIONS**

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**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

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**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

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**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

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## DECISION INFORMATION

Decision Information	
<b>Is the decision a Key Decision?</b> 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:  <b>NEDDC:</b> <b>Revenue - £125,000</b> <input type="checkbox"/> <b>Capital - £310,000</b> <input type="checkbox"/> <input checked="" type="checkbox"/> <i>Please indicate which threshold applies</i>	No
<b>Is the decision subject to Call-In?</b> (Only Key Decisions are subject to Call-In)	No
<b>District Wards Significantly Affected</b>	None

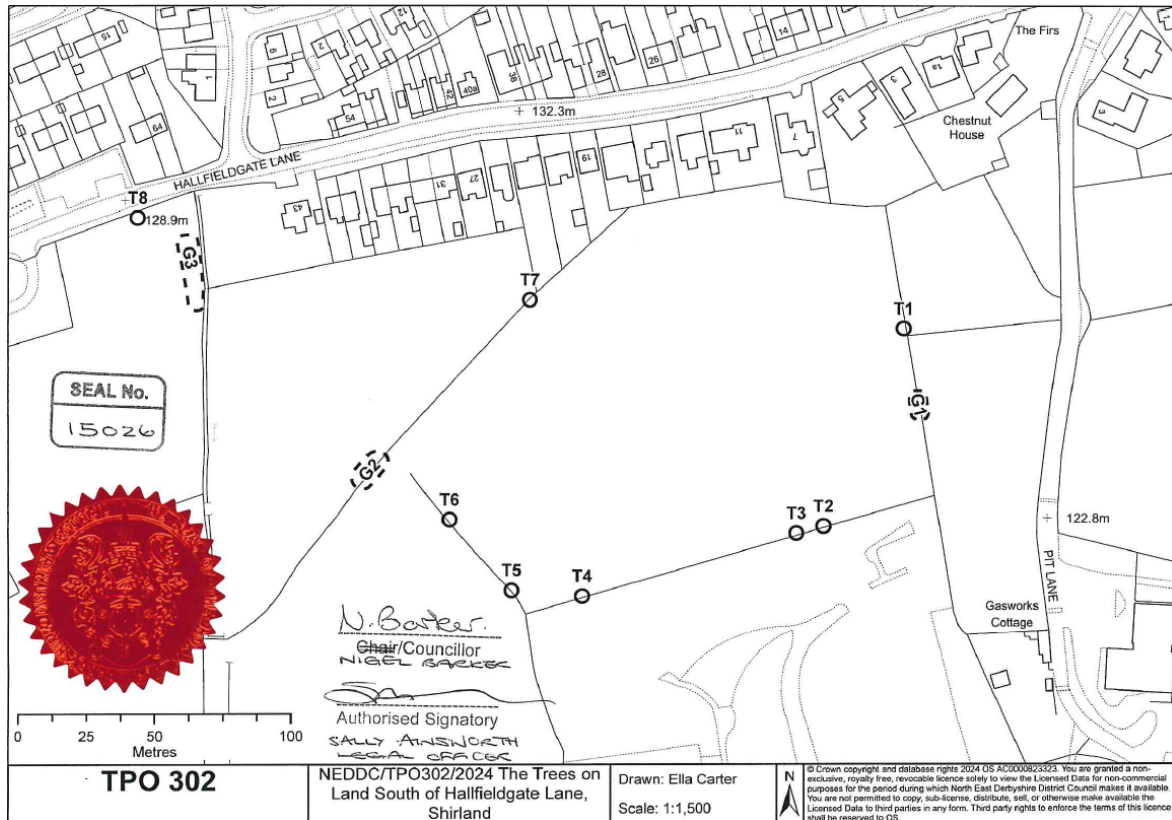
<b>Equality Impact Assessment (EIA) details:</b>	
<b>Stage 1 screening undertaken</b> <ul style="list-style-type: none"> <li>Completed EIA stage 1 to be appended if not required to do a stage 2</li> </ul>	Yes, appended.
<b>Stage 2 full assessment undertaken</b> <ul style="list-style-type: none"> <li>Completed EIA stage 2 needs to be appended to the report</li> </ul>	No, not applicable
<b>Consultation:</b> <b>Leader / Deputy Leader</b> <input type="checkbox"/> <b>Cabinet</b> <input type="checkbox"/> <b>SMT</b> <input type="checkbox"/> <b>Relevant Service Manager</b> <input checked="" type="checkbox"/> <b>Members</b> <input type="checkbox"/> <b>Public</b> <input checked="" type="checkbox"/> <b>Other</b> <input type="checkbox"/>	Yes  Details: Affected land owners have been consulted in line with legislation.

<b>Links to Council Plan priorities;</b> <ul style="list-style-type: none"> <li><b>A great place that cares for the environment</b></li> <li><b>A great place to live well</b></li> <li><b>A great place to work</b></li> <li><b>A great place to access good public services</b></li> </ul>
(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 initial inspection of trees at the land south of Hallfieldgate Lane, Shirland on 25<sup>th</sup> July 2024. This was in response to a request from the Planning Manager (Development Management) for the trees to be considered for protection.
- 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 A Tree Preservation Order (TPO 302), specified by eight individual trees and three groups of trees was made and served on 22<sup>nd</sup> August 2024. The effect is that the Order applies for six months or until confirmed or modified.



## 2. Details of Proposal or Information

- 2.1 The land south of Hallfieldgate Lane is comprised of agricultural land southwest of Shirland. The site comprises 3.95 hectares across four agricultural fields which are separated by hedgerows. The western extent of the north boundary of the site abuts Hallfieldgate Lane and then follows the rear boundary of domestic properties along Hallfieldgate Lane towards the eastern extent of the north boundary. The east boundary of the site abuts two grazing fields before the field pattern stops at Pit Lane. The southern site boundary abuts Shirland Golf Course, and the western site boundary abuts Hallfieldgate Farm, which denotes the start of the Hallfield Gate Conservation Area. The site is south facing with ground gradually falling away from Hallfieldgate Lane towards Alfreton Brook. The elevated position of Hallfieldgate Lane allows views across the site and onto the open countryside. Footpath NE16/33/1 exits Pit Lane to the east of the site and crosses one of the grazing fields before entering Shirland Golf Course at the north boundary of the golf course. The footpath then travels in a southwest direction across the golf course allowing views into the site before turning south to meet Sheep Lane.
- 2.2 A row of mature Sycamore line the north boundary in a prominent roadside position as Hallfeildgate Lane approaches the Hallfield Gate Conservation Area. The agricultural fields within the site are divided and bound by hedgerows. These hedgerows include several mature trees growing in groups or as individuals and can be readily seen from Hallfieldgate Lane or along footpath NE16/33/1.

- 2.3 Outline approval for the development of 90 dwellings at the site was granted at appeal APP/R1038/W/20/3259758. The site is currently pending a decision on Reserved Matters application 23/00947/RM for agreement of appearance, landscaping, layout and scale. The site is subject to an appeal to vary conditions 4 (approved plans), 16 (Temporary Access) and 17 (Highway Improvement Works) of planning approval, as allowed at appeal; Planning Inspectorate ref: APP/R1038/W/23/3324560. The site is subject to an additional appeal for a proposed footway extension to the north of the side of No.43 Hallfieldgate Lane; Planning Inspectorate ref: APP/R1038/W/23/3324561.
- 2.7 NEDDC TPO 104 was served in 1993 and protects roadside trees along Hallfieldgate Lane. However, one Sycamore tree which is considered to form part of this linear roadside feature was omitted from TPO 104. The reasons for the omission are not known.
- 2.8 NEDDC TPO 302 was served on 22<sup>nd</sup> August 2024 in its provisional form and protects eight individual trees and three groups of trees within the site. TPO 302 includes protection for the Sycamore (T8) which is roadside to Hallfieldgate Lane and previously omitted from NEDDC TPO 104.
- 2.7 The serving of TPO 302 has been contested and one objection has been received. The Council's Tree Officer gained permission to enter the land in response to this objection and undertook a detailed assessment of the trees on the 5<sup>th</sup> of November 2024. The Tree Officer identified eight individual trees and three groups of trees worthy of the continued protection of TPO 302.

### **3 Representations**

- 3.1 One **Objection** has been received which raised the following points for consideration:
- 3.2 The site has the benefit of Outline Planning Permission and subject to a Reserved Matters application that is currently pending consideration. The proposals do not promote the removal of the TPO protected trees and condition 8 of the Appeal Decision requires a tree protection plan to be submitted for approval.
- 3.3 The site is subject to two Appeals. A planning condition could be imposed to require a tree protection plan to NEDDC for trees to be retained within the sites covered by the Appeals.
- 3.4 No details of any objective assessment that has been carried out by NEDDC to demonstrate why trees included within the TPO are considered to comprise an important element in the amenity of the area. It is understood that many Councils provide copies of a TEMPO assessment in their letters of notification.
- 3.5 Whilst some trees are visible from the public space, others are more distant. What is the reasonable degree of public benefit for including all of the TPO trees on this basis? We are unclear whether the TPO is based upon present or future benefit.

- 3.6 The trees are not considered scarce, and the trees have no particular importance in terms of their wildlife habitat.
- 3.7 The trees are under good arboricultural management.

#### **4 Officer Response**

- 4.1 The Officer response to each part of the objection is given below:
- 4.2 The Appeal Decision allowed for Outline planning permission for up to 90 dwellings and site access at land to the south of Hallfieldgate Lane, Shirland, with all other matters reserved. The Appeal Decision was granted in accordance with approved plans: Site Location Plan Drawing No 07/1657/LP Rev N and Proposed Site Access Drawing No JD119 – figure 3.1 Rev C. However, details of the appearance, landscaping, layout and scale are to be agreed following a Reserved Matters application at a later stage, and the Reserved Matters application is pending consideration.

Site Location Plan Drawing No 07/1657/LP Rev N is a Location Plan describing the red line boundary of the site and gives no detail on the indicative layout of the site and which trees may be retained or removed from the site. Proposed Site Access Drawing No JD119 – figure 3.1 Rev C is limited to detailing the arrangements of the proposed site access onto the site from Hallfieldgate Lane. The Proposed Site Access Drawing does not include any detailed information on the layout of the remainder of the site beyond the access, and what trees may or may not be removed. It is not possible to know what the proposal promotes regarding the retention of trees within the site from the drawings associated with condition 8 of the Appeal Decision.

The requirements of a condition rely upon the precise wording within the condition itself. Condition 8 of Appeal Decision APP/R1038/W/20/3259758 is given below:

*No development shall take place until a detailed Tree Protection Plan, showing the positions, species and crown spread of trees to be retained within, and adjacent to, the application site together with measures for their protection for the duration of the works, has been submitted to, and approved in writing by, the local planning authority. The means of protection shall be installed in accordance with the approved scheme before any works commence on site and shall be retained in position until all the building works hereby approved have been completed. The area within the fenced/protected area shall not be used for storage or the parking of machinery or vehicles and the ground levels shall not be altered.*

There appears nothing within the wording of condition 8 which prevents the removal of trees from the site, or irreversible damage being inflicted to the trees onsite, before the submission of a detailed Tree Protection Plan, or the commencement of the development. The inclusion of a requirement to submit a plan showing the positions and species of trees to be retained within the

wording of the condition implies that details pertaining to the retention of trees were not known at the time the Appeal Decision was issued.

- 4.3 Whilst a planning condition could be imposed to require a tree protection plan it would not provide the level of protection afforded by Tree Preservation Order. Planning permission must first be implemented before any condition would bite, and there would be nothing preventing the removal of trees, before planning permission is implemented. If a planning condition were imposed and not being implemented, an authority would have to take enforcement action and issue an enforcement notice or a breach of condition notice to require the condition to be implemented. Both the enforcement notice and the breach of condition notice would require a period of compliance before criminal sanctions can trigger. There is nothing preventing irreversible damage being sustained to trees protected by a tree protection plan, imposed by planning condition, during the period of compliance.
- 4.4 TEMPO is a field guide to decision making and includes all the relevant factors in the TPO decision-making chain. Whilst the Council does choose to use the TEMPO system, there is no requirement to include a copy of a TEMPO assessment within any notification following the creation of an Order. The requirements of notification following an Order being made are covered within regulation 5 of The Town and Country Planning (Tree Preservation)(England) Regulations 2012. The requirements include a copy of the Order and a notice containing the following particulars:
- a) The reasons for making the Order.
  - b) A statement that objections or other representations with respect to any trees, groups of trees or woodlands specified in the Order may be made to the authority in accordance with regulation 6.
  - c) The date, being at least 28 days after the date of the notice, by which any objection or representation must be received by the authority; and
  - d) A copy of regulation 6

There is no requirement to include a copy of a TEMPO assessment, and many Councils do not use TEMPO whatsoever. The notification given upon the serving of TPO 302 explained that the Council made the Order because the trees are considered an important element in the amenity of the area. Alongside a copy of the Order and the other required particulars, this is considered adequate to satisfy the requirements of giving reason for making the Order, pursuant to regulation 5(2)(a) of The Town and Country Planning (Tree Preservation)(England) Regulations 2012.

- 4.5 When making TPOs, an authority is advised to develop ways of assessing amenity value of trees in a structured and consistent way and public visibility will inform the authority's assessment of whether the impact on the local environment is significant. As such, the Council choose to use the TEMPO system. TEMPO is a structured and consistent field guide to decision making and includes all the relevant factors in the TPO decision-making chain. Part C of the TEMPO system considers the relative public visibility and suitability of a tree or group of trees for TPO. Part C of the survey data sheet for TEMPO

includes the prompt ‘*consider realistic potential for future visibility with changed land use*’. The Guidance Notes for Users of TEMPO explains that this prompt is included within the survey data sheet to address the commonplace circumstance where trees that are currently difficult to see are located on sites for future development, with this likely to result in enhanced visibility.

TPO 302 is a TPO comprising eight individual trees and three groups of trees. T1, T2, T3, T4, T8 and G1 and G3 provide a significant contribution to the amenity of the location presently. T5, T6, T7 and G2 will provide a significant contribution to the amenity of the location in the future, following the site being developed. During the initial site visit of the 25<sup>th</sup> of July 2024, the Tree Officer assessed the site from Hallfieldgate Lane and footpath NE16/33/1. In addition to assessing the current contribution made by trees from the existing rights of way, the Tree Officer used the Proposed Site Layout drawing: Accommodation Schedule Plan 07-1657-(02)002 Rev B, submitted in support of the Reserved Matters application, to assess the realistic potential for future visibility with changed land use. A TEMPO assessment was undertaken for each tree with the resulting score recorded. Where a tree or group of trees scored a value of twelve or more, which is a score required to recommend that TPO for the individual or group of trees is defensible in the TEMPO system, it was included within the protection of TPO 302.



Proposed Site Layout: Accommodation Schedule Plan 07-1657-(02)002 Rev B

Following the serving of TPO 302 on 22<sup>nd</sup> August 2024, and having receipt of the details of the objection, the Tree Officer contacted the proprietor of the land to seek permission to undertake a further site visit. A second site visit was undertaken on the 5<sup>th</sup> of November 2024, where a detailed assessment of trees internal to the site was undertaken, and this included a review of the TEMPO



assessment. This second site visit served as confirmation to the Tree Officer that the trees originally considered worthy of protecting by TPO 302 warranted the continued protection of TPO 302.

- 4.6 There is no requirement for the species of tree to be rare, or scarce, or particularly important in terms of their wildlife, before it is considered suitable for protection by TPO. Whilst consideration of the rarity of a particular tree might help inform decision making as to whether an individual, or group of trees merit TPO protection, it is the consideration of public visibility alongside characteristics of individual, collective and wider impact, such as size and form; future potential as an amenity; rarity, cultural or historic value; contribution to, and relationship with, the landscape, which in combination inform whether the loss of an individual or group of trees would have a significant negative impact on the local environment and its enjoyment by the public. Authorities are advised that other factors, such as importance to nature conservation, may be considered relevant factors, although these factors alone would not warrant making an Order.
- 4.7 Whilst it appears true that the trees are under good arboricultural management currently, the site benefits from Outline planning permission for the development of up to 90 residential units. The site is subject to a Reserved Matters application and subject to two further appeals. As such, it is expected that the development of the site will happen in some form, and that current land use and ownership of the site shall change. The Tree Officer does not know who will own or have management responsibility of the trees across the site, but it is realistic to expect that the current regime of arboricultural management shall change. The government guidance notes are very clear that there does not have to be an immediate risk for there to be a need to protect trees and that pressure from development may trigger the expedience of making an Order.

## **5 Reasons for Recommendations**

- 5.1 A tree preservation order is normally made to protect trees in the interests of amenity, and this involves an assessment of the tree's 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 trees 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 either readily visible from public viewpoints along the highway and along public footpaths or will provide a future amenity following the development of the site. 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 principle of changing land use at land south of Hallfieldgate Lane has already been determined at appeal, and it appears development of the site shall happen in

the near future. The Tree Officer perceives a risk of losing mature trees from this location from development pressure, and this increases the protection imperative above the level of precaution alone.

## 5 **Alternative Options and Reasons for Rejection**

- 4.1 To decide to not confirm 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**

<b>Appendix No</b>	<b>Title</b>
1	EQIA Screening
<b>Background Papers</b> (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)	