



Council name	COTSWOLD DISTRICT COUNCIL
Name and date of Committee	PLANNING AND LICENSING COMMITTEE – 15.01.2025
Subject	TREE PRESERVATION ORDER – 24/00002/AREA
Wards affected	Fosseridge
Accountable member	CLlr D Cunningham Email: david.cunningham@cotswold.gov.uk
Accountable officer	Justin Hobbs (Tree Officer, Heritage & Design) Email: justin.hobbs@cotswold.gov.uk
Report author	Justin Hobbs (Tree Officer, Heritage & Design) Email: justin.hobbs@cotswold.gov.uk
Summary/Purpose	To consider comments of objection and support to the making of Tree Preservation Order 24/00002/AREA in respect of trees at Upper Town House, Longborough.
Annexes	Annex A – Whole Site Plan Annex B – Site plan with consented development Annex C – Cotswold District Council Tree Preservation Order Appraisal Form Annex D - Tree Preservation Order 24/00002/AREA (Plan & Schedule) Annex E – Objection from site owner Annex F – Objection from agent for site owner
Recommendation(s)	That Planning and Licensing Committee resolves to: Confirm TPO 24/00002/AREA
Corporate priorities	<ul style="list-style-type: none">• Delivering Good Services• Responding to the Climate Emergency• Supporting Communities
Key Decision	NO



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Exempt	NO
Consultees/ Consultation	<p>Heritage and Design Manager, Chair of the Planning and Licensing Committee, Ward Member and Parish Council.</p> <p>Landowner and all interested parties were also served with a copy of the TPO and Notice as per section 6 of the Town and Country Planning (Tree reservation) (England) Regulations 2012.</p>



1. EXECUTIVE SUMMARY

- 1.1** This report is to appraise members of a Tree Preservation Order (TPO) at Upper Town House, Longborough (CDC ref TPO 24/00002/AREA).
- 1.2** Following concerns about tree removal, damage to trees, and potential future threat to trees on site, an assessment of the public amenity value of the trees was undertaken. Assessment indicated trees across the site did warrant the making of a TPO, and given the urgency of the situation, an area category TPO. An area category TPO protects all the trees present within a defined area at the time the TPO was made (subject to certain exceptions).
- 1.3** The TPO was made and served on 27.08.2024.
- 1.4** Objections to, and support for, the making of the TPO have been submitted to the Council.
- 1.5** The Council has a legal obligation to thoroughly consider objections and/or representations made regarding the TPO.
- 1.6** This report considers and responds to the grounds for objections.
- 1.7** The conclusion of the report is a recommendation that the TPO is confirmed.

2. BACKGROUND

- 2.1** Upper Town House, located off Moreton Road, Longborough, was formerly a single post war dwelling with large garden / landscaped areas of approximately 3 hectares.
- 2.2** Planning consent has been granted for the demolition of the dwelling & 6no houses in the northern section of the site covering approximately 0.68 hectares. CDC planning references 21/02068/FUL & 24/00569/FUL. **Whole site plan at Annex A, Site plan with consented development at Annex B.**
- 2.3** The site is outside of the Longborough Conservation Area, the boundary of which extends along a section of the western boundary. The site is within the Cotswolds Area of Outstanding Natural Beauty.
- 2.4** On 10.07.2024. the Council logged a Planning Enforcement complaint relating to alleged tree removal in possible breach of planning permissions 21/02068/FUL & 24/00569/FUL at Upper Town House.
- 2.5** On 12.07.2024, Officers from Planning Enforcement and the Tree Team visited the site to investigate, and found trees and shrubs had been removed along the western boundary of the development site.



- 2.6** Whether the removal of these trees and shrubs was permitted within the parameters of the planning consents is the subject of an ongoing investigation.
- 2.7** On 20.08.24, during a follow up visit Officers noted that the fencing, that should have been in place to protect retained trees within the development site was missing in places, had been moved, or was not as per the agreed specification. In addition, potentially harmful activities to trees associated with the development were noted to the south of the development site but still within the same ownership. This included mounding of spoil, mixing of cement, storage of materials, and tracking of heavy plant within or close to the rooting zones of existing trees. It was also noted several trees in this area had been felled.
- 2.8** Given the situation on site with ongoing development, lack of compliance with agreed tree protection measures and concerns being raised by the public, Officers felt it expedient to consider whether it would be appropriate to serve a TPO to protect the remaining trees on the whole site.
- 2.9** The public visual amenity of trees across the site (both within the development site and the wider site in the same ownership) was assessed and it was considered expedient to serve a TPO to prevent trees from being damaged or felled across the whole site. **Cotswold District Council Tree Preservation Order Appraisal Form is at Annex C.**
- 2.10** Following consultation with the Chair of the Planning & Licensing Committee and the local Ward Member, the TPO was served on 27/08/2024. **A copy of the TPO is at Annex D.**
- 2.11** The reasons for making the TPO were given on the relevant TPO notice as:
Part of the site is currently being developed and residents have expressed concerns about trees being removed. In order to ensure full consideration of the public amenity value of the trees on the site in any future decisions regarding their future, a TPO is considered expedient.
- 2.12** Under the provisions of the legislation the TPO takes effect immediately but must be confirmed by the Council within six months if it is to take permanent effect. Prior to confirming a TPO, the Council must thoroughly consider any objections and/or representations that have been made.
- 2.13** The regulations relating to TPOs allow for a 4 week consultation period from the date the TPO is served for written representations to be submitted to the council. After this period has passed, it is for the Council to determine whether to take account of any further representations.



- 2.14** Within the 4-week consultation period the site owner and an agent acting for the owner submitted formal objections. **Refer to Annex E & Annex F**
- 2.15** Within the same period, 5 individual representations in support of the TPO were submitted along with a supporting petition containing 57 signatories.
- 2.16** The supporting comments are summarised below:

The trees in the area labelled A1 on the plan in the Order are directly adjacent to the Longborough Conservation Area and as such should be protected. They are important in landscape, ecological biodiversity and visual amenity and are at risk if not officially protected.

These trees are visible from public areas, footpaths and spaces from all directions around this area and significantly contribute to the setting of Longborough village within the Cotswold Area of Outstanding Natural Beauty (AONB).

We support the TPO which we believe should be made permanent (confirmed) following the six-month temporary Order for the following reasons:

- 1. The trees provide a public amenity benefit for residents and visitors as an important contribution to the landscape and setting of the village.*
- 2. The trees and associated shrub layer provide a valuable wildlife habitat providing bio diversity within the village.*
- 3. The trees are visible from public areas within the Area of Outstanding Natural Beauty (National Landscape).*
- 4. The trees are an important element in the setting of the Village Conservation Area which is directly adjacent to the development area.*
- 5. The retention and protection of the trees adheres with CDC planning policies and objectives.*

3. THE GROUNDS FOR OBJECTION TO THE TPO

- 3.1** To assist members, the 4 grounds for objections are summarised below:

Grounds for objection No.1 " Specifically, it is grossly unreasonable for the Council to grant permission and then seek to frustrate its implementation with a TPO applying to trees that must be removed to enable it"



Grounds for objection No. 2 *"The TPO fails one of the two statutory tests, expediency...there is a specific exception within the governing Regulations for works necessary to implement a full planning permission"*

Grounds for objection No. 3 *"..the TPO also fails the second statutory test, amenity. It fails this test because it covers, explicitly, all trees of whatever species, regardless of their condition or quality, and with precisely zero systematic assessment of their amenity value"*

Grounds for objection No. 4 *"..the nature of the TPO, which has been applied indiscriminately as an Area designation across the whole site....the Council had ample information...to make a discriminating TPO, which listed trees as individuals, groups and so on...it could have avoided including in the Order trees which a) do not merit statutory protection...and which b) can and need to be removed to enable the 2024 consent"*

4. OFFICER RESPONSE

4.1 The grounds for objections are considered as follows.

4.2 Grounds for objection 1

4.2.1 The TPO was not made to frustrate the implementation of a planning consent and does not prevent the removal of trees required to implement the planning consent on this site.

4.2.2 At the time of serving the TPO, most trees required to be removed to implement the planning consent had already been removed. However, given the uncertainty around the removal of trees along the western boundary, which is the subject of an ongoing investigation, the failure of the development to adequately protect trees on site shown to be retained on approved plans, and the lack of an agreed landscaping plan, a TPO protecting all trees was considered expedient.

4.3 Grounds for objection 2

4.3.1 The specific exception within the governing Regulations for works necessary to implement a full planning permission is in Section 14 (1) (a) (vii) of the Regulations and states that *"Nothing in regulation 13 shall prevent... the*



cutting down, topping, lopping or uprooting of a tree—so far as such work is necessary to implement a planning permission"

4.3.2 Furthermore, Government Guidance (Tree Preservation Orders and trees in conservation areas - Paragraph: 083 Reference ID: 36-083-20150415) states:

The authority's consent is not required for carrying out work on trees subject to an Order so far as such work is necessary to implement a full planning permission. For example, the Order is overridden if a tree has to be removed to make way for a new building for which full planning permission has been granted. Conditions or information attached to the permission may clarify what work is exempt.

However, the authority's consent is required for work on trees subject to an Order if:

- *development under a planning permission has not been commenced within the relevant time limit (ie the permission has 'expired');*
- *only outline planning permission has been granted; and*
- *it is not necessary to carry out works on protected trees in order to implement a full planning permission.*

The authority's consent is also required, for example, for work on trees protected by an Order that is necessary to implement permitted development rights

4.3.3 For the avoidance of doubt, this TPO cannot, and does not seek to protect trees that may need works, including removal, to implement the planning consent. However, again, due to the issues raised in 4.2.2, the TPO was assessed as being expedient.

4.3.4 The making and confirmation of the TPO does not prevent applications for works in the future. Such applications would be treated on their merits.

4.4 Grounds for objection 3

4.4.1 Government Guidance (Tree Preservation Orders and trees in conservation areas - Paragraph: 007 Reference ID: 36-007-20140306) states:



'Amenity' is not defined in law, so authorities need to exercise judgment when deciding whether it is within their powers to make an Order.

Orders should be used to protect selected trees and woodlands if their 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.

And at Paragraph: 008 Reference ID: 36-008-20140306:

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

- 4.4.2** The Council has developed a structured methodology for assessing the amenity value of trees when deciding whether a TPO is expedient. A copy can be found at appendix B
- 4.4.3** The significant number of signatories on the petition in support of the TPO, and the number of individual supporting representations indicates that there is public support for the protection of trees on this site, and that the TPO brings a reasonable degree of public benefit presently and into the future.

4.5 Grounds for objection 4

- 4.5.1** The making of a TPO using an area category protects all trees at the time it was made growing within a defined area.
- 4.5.2** Government Guidance (Tree Preservation Orders and trees in conservation areas - Paragraph: 029 Reference ID: 36-029-20140306) states:

The area category is one way of protecting individual trees dispersed over an area. Authorities may either protect all trees within an area defined on the Order's map or only those species which it is expedient to protect in the interests of amenity.

The area category is intended for short-term protection in an emergency and may not be capable of providing appropriate long-term protection. The Order will protect only those trees standing at the time it was made, so it may over



time become difficult to be certain which trees are protected. Authorities are advised to only use this category as a temporary measure until they can fully assess and reclassify the trees in the area. In addition, authorities are encouraged to resurvey existing Orders which include the area category.

4.5.3 The Council has a duty under section 197 of the Town and Country Planning Act to make provision for the preservation and planting of trees. The use of an area category TPO is appropriate in the specific circumstances of this site. The Council's normal method to categorise trees on a TPO schedule is to identify individual trees, tree groups, and if appropriate woodlands. However, given the number of trees and tree groups across the site, and the concerns relating to the ongoing development it was considered that an area category would be the most appropriate way to ensure immediate tree protection across the site. Once the consented development has been completed and taking account of any future changes in whole site use, the Council intends to re-assess the trees on the site and to either amend (vary) the TPO to re-categorise the trees as individuals or groups, or revoke the TPO and remake another TPO, or a number of TPO's depending on any future land use changes. Revoking and remaking the TPO after the consented development has been completed will give the opportunity, if it is considered appropriate, to include trees planted as part of the landscaping scheme in any new TPO.

5. ALTERNATIVE OPTIONS

5.1 To not confirm the Order

6. FINANCIAL IMPLICATIONS

6.1 There are no financial implications for the Council

7. LEGAL IMPLICATIONS

7.1 There are no legal implications of this report beyond those associated with the serving of a TPO.

8. EQUALITIES IMPACT

8.1 There are no equalities impacts related to this report.

9. CLIMATE AND ECOLOGICAL EMERGENCIES IMPLICATIONS

9.1 The protection and retention of trees can provide both climate emergency and nature recovery benefits.



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10. BACKGROUND PAPERS

10.1 The following documents have been identified by the author of the report in accordance with section 100D.5(a) of the Local Government Act 1972 and are listed in accordance with section 100 D.1(a) for inspection by members of the public:

- None

(END)