

44-1028_JFL
MORETON ROAD

23 September 2024

The Tree Officer
Cotswold District Council
Council Offices
Trinity Road
CIRENCESTER, GL7 1PX

*By registered post to the address, and
By email to planning@cotswold.gov.uk*

To whom it may concern,

Your Tree Preservation Order 24/00002/Area –
Objection

We write as arboricultural advisors to Upper Townhouse Longborough SPV Ltd, owners of the freehold of Upper Townhouse, Moreton Road, Longborough, whom recently you have served with the Tree Preservation Order (“TPO”) referred above, as made on 27 August 2024.

On behalf of our client, we **OBJECT** to this Order, setting out our reasons for so doing below.

Background information

1. The site benefitted from full planning permission under your ref. 21/02068/FUL as granted on 31 October 2023 (“the 2023 consent”) subject to conditions, with two such being presently material: C12 and C13. Between them, these two conditions give effect to, and require recommendations to be followed within an arboricultural report prepared by others in April 2021, and submitted with the planning application as subsequently approved.
2. The arboricultural report identified for removal seven trees (survey numbers 5, 6, 7, 37, 38, 55, 64) and three hedges (H1-H3).
3. On 24 April 2024 Cotswold DC granted a further consent on the material land, under its application ref. 24/00569/FUL (“the 2024 consent”). This consent varied the 2023 consent by amendment (per S.73 Town and Country Planning Act 1990 (as amended); “the Act”) of Condition 2 to the 2023 consent, permitting thereby substitution of site layout plans.
4. Conditions attached to the 2024 consent included by direct carry-over C12 and C13, which remain referenced and anchored to the 2021 arboricultural report.

5. However, said report reflected the site layout as consented in 2023. It does not reflect that for which consent was granted in 2024, and which is currently being built out. The Council should have sought (but did not so seek) an updated arboricultural report, relevant to the scheme now at hand, which could and should have been referenced by the 2024 consent.
6. It is our understanding that the TPO was made in response to local concerns regarding (entirely lawful) tree removal. However, the tree removal in question (which is presently incomplete), was put in hand for no other purpose than out of necessity to enable implementation of 24/00569/FUL. Whilst the necessary tree removal exceeds that set out in the 2021 arboricultural report, it does so because that report is not reflective of the 2024 consent.

Grounds for Objection

7. **The first ground** for objection is grossly unreasonable conduct, contrary to the presumption applying to public bodies per the well-known test of *Wednesbury*. Specifically, it is grossly unreasonable for the Council to grant planning permission and then seek to frustrate its implementation with a TPO applying to trees that must be removed to enable it.
8. **The second ground** for objection is that the TPO fails one of the two statutory tests, expediency, that underpin the power to make such Orders, per the Act at S.198. The reason the TPO fails this test is that there is a specific exception within the governing Regulations¹ for works necessary to implement a full planning permission.
9. It follows that our client can continue with the required tree removal on a date of its choosing in any event, and may well do so. It may be argued that the TPO has utility by protecting trees other than those which cannot be retained for planning reasons; we deal with this argument in the fourth ground. In any event, failure of this statutory test makes the TPO *ultra vires*.
10. **The third ground** for objection is that 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. Insofar as many of the trees covered by the TPO (discussed at ground four), do not meet any reasonable qualitative threshold for statutory protection, it cannot plausibly be said that the Order has been correctly applied under the statutory power. This is a separate failure that also renders the TPO *ultra vires*.
11. **The fourth ground** for objection relates to the nature of the TPO, which has been applied indiscriminately as an Area designation across the whole site (both redline and blueline). The purpose and utility of Area Orders is to address cases where nothing is known about a tree population considered to be at risk, thereby requiring swift application of comprehensive statutory protection, which can be refined in due course by modification or review of the TPO.

¹ The Town and Country Planning (Tree Preservation)(England) Regulations 2012

12. This is self-evidently not the case here, because the Council has for more than a year been in possession of the detailed tree survey which sits within the arboricultural report that it has itself referenced in conditions. It follows that the Council had ample information before it to make a discriminating TPO, which listed trees as individuals, groups and so on.
13. If the Council had not adopted the administratively lazy approach of an Area Order (which egregiously compounds its copy-and-paste approach to planning conditions), it could have avoided including in the Order trees which a) do not merit statutory protection (thereby satisfying the third ground), and which b) can and need to be removed to enable the 2024 consent (the second ground).
14. This concludes our grounds for objection.

What we now require

15. We require **acknowledgement** by return that:
 - i) This Objection has been received; and that
 - ii) TPO 24/00002/Area will not be confirmed until this Objection has been considered.
16. We require **written confirmation** to be received by us no later than five working days from 24 September 2024 that trees can be removed where necessary to enable consent 24/00569/FUL, as they excepted from statutory control by virtue of the Regulations at Reg. 14(1)(9a)(vii). For the avoidance of doubt, this means tree survey numbers G1 (alder) and T18 (grey poplar).
17. We require **full details** as to how this Objection will be considered by the Council, noting the requirement for fairness and transparency in decision-making by public bodies. Your process should exclude any decision-making role for any Officer involved in the making of the Order. On behalf of our client, we reserve the right to submit further information for consideration by any panel or committee that exists or may come to be constituted or tasked with considering this Objection, including the right to be heard in person by said panel or committee in the event that Officers promoting the TPO are also afforded this opportunity.
18. We require **explicit confirmation** on all of these points.

We look forward to hearing from you without delay.

Yours faithfully,

Forbes-Laird Arboricultural Consultancy Ltd