

COMMITTEE REPORT

BY THE EXECUTIVE DIRECTOR OF ECONOMIC GROWTH AND NEIGHBOURHOOD SERVICES
READING BOROUGH COUNCIL
PLANNING APPLICATIONS COMMITTEE: 22 JUNE 2022

Ward: Kentwood
Proposal: Objection to a Tree Preservation Order

RECOMMENDATION

That the Tree Preservation Order be confirmed.

1. PURPOSE AND SUMMARY OF REPORT

- 1.1 To report to Committee an objection to Tree Preservation Order No. 2/22 relating to Tilehurst Allotments, Armour Hill/Kentwood Hill, Reading (copy of TPO plan attached - Appendix 1).

2. BACKGROUND

- 2.1 The site has been subject to a TPO (24/00) since 2000 which protects 12 individual trees, 2 Groups of trees and 5 Areas of tree (copy of TPO plan attached - Appendix 2).
- 2.2 Officers were made aware of the sale of the land (currently owned by Tilehurst People's Local Charity) by local residents and considerable local concern was raised about potential tree removal - all trees not protected by TPO 24/00 could have legally been removed.
- 2.3 As TPO 24/00 is 22 years old and tree coverage is likely to have changed in that period, it was considered appropriate to serve an Area TPO to protect all trees until an appropriate time when a replacement, more specific and up-to-date TPO could be made. Area TPO 2/22 was therefore served on 9 March 2022.

3. RESULT OF CONSULTATION

- 3.1 An objection to the Tree Preservation Order has been made by the Chairman (Mr Cairns) of the Tilehurst People's Local Charity (TPLC) who own the land, based on the following:
- 1) Concern that the TPO has not been served to all interested parties, i.e. adjacent landowners, all individual licensees of the allotment plots and tenant of the builder's yard or 'Depot' off Kentwood Hill
 - 2) An existing TPO (24/00) is already in place which cannot be considered by RBC to be in any way deficient or inappropriate as it was not varied or revoked in 2014 when RBC issued its first 'Call For [Development] Sites'; neither in 2017 - when RBC re-issued its 'Call for [Development] Sites'; nor in 2019 - when the Reading Local Plan strengthened planning policy around trees, and at the same time designated WR3s and WR3t to be sites suitable for residential

development; and not in 2021 when the new RBC Tree Strategy was produced

- 3) The TPO is neither 'necessary or expedient' (with reference to objective 5 of the Tree Strategy) - it is not 'necessary' as there is already a TPO in place.
- 4) Abuse of TPOs as a campaigning weapon - *"TPLC considers that RBC may have acceded to the entreaties of campaigners - who are lobbying and seeking to abuse all possible mechanisms in order to thwart or disrupt the sale of TPLC's land - rather than allowing the normal planning process to take place, with its statutory environmental impact assessment. In our role as "Trustees for the Poor" of West Reading, Tilehurst, Holybrook and Theale, TPLC deprecates the use of such tactics, which are potentially at great cost to local people in financial hardship"*
- 5) Significance of the Local Plan - the Local Plan includes various designations within the land covered by the TPO: The allotments area is designated as Local Green Space; Sites WR3s (land off Kentwood Hill) and WR3t (land off Armour Hill) were designated as being suitable for residential development. Specimen development layouts had been submitted for consideration by the RBC Planning Department following the 'Call For Sites' in 2014 and 2017, and the 'Withies' (located between the allotments and the development sites) was identified as an Area of Biodiversity Interest. To impose a new TPO covering the allotments area is an anomalous step, as the trees in that area are primarily fruit trees, or else are covered by the existing TPO 24/00; inclusion of the Withies area is an unwarranted step, as the area is covered by the existing TPO 24/00, and to include the two development sites (WR3s and WR3t) seems to be at odds with their designation in the Local Plan, given that the existing TPO 24/00 had identified only a handful of individual trees of significance within those sites, and any planning application would automatically encompass a statutory Environmental Impact Assessment.
- 6) Amenity Value - Any amenity value of the TPLC land was not deemed sufficient to preclude the Local Plan from designating sites WR3s and WR3t as suitable for residential development; Relatively few trees on the land covered by the new TPO are currently visible from public places such as Kentwood Hill, Armour Hill and Armour Road. Any visibility of trees from the allotments area does not contribute to their amenity value as the allotments are only legally accessible to TPLC's licensees, and not to the general public. The lack of public visibility of trees is demonstrated by the fact that campaigners who are opposed to the sale or development of TPLC's land have had to resort to the use of a camera-equipped 'spy-drone' flying at great height over TPLC's private land. TPLC therefore disputes any assertion that the trees on its private land provide significant amenity value to the general community.
- 7) Common Aspects Of Amenity / Community Value - The Land Property and Development Board of RBC has recently confirmed its decision to refuse to list the land covered by the new TPO as an Asset of Community Value (ACV). In its robust rebuttal of the ACV Nomination, TPLC demonstrated the lack of open public access to its land and the lack of open public use of its land. As the area covered

by the TPO is considered not to have any significant 'Community Value', then even stronger evidence would be necessary to justify the evaluation of any 'Amenity Value'.

- 8) Impact on sale of the land - The issuing of a new TPO has effectively pre-empted and complicated any planning application by, and any TPO-related discussions with, a future developer of the site. The purpose of the land sale is to raise essential capital to fund the Charity's grant-making activity. The urgency of removing the blanket TPO is not because the resultant delays to the sale of the land would harm any business interests (since the Trustees and Clerk who run the Charity are all unpaid volunteers, and the Charity has no shareholders). The urgency arises out of the harm that would be caused to local residents of Reading, Tilehurst and Theale who are in financial need, hardship and distress - by delaying grant payments to them. The continued existence of the blanket TPO will cause unnecessary delay to the sale of land, resulting in significant lost income to the Charity, and depriving the poor of grants to the value of £5,000 to £10,000 for each week of delay.
- 9) Lack of prior consultation - It is disappointing that the new TPO was imposed by RBC without any prior consultation with TPLC. We would have preferred to be '*working better with you*'.

3.2 An objection to the Tree Preservation Order being confirmed in its current form and made permanent has also been made by Aspect Arboricultural Ltd on behalf of TPLC based on the following:

- 1) Lack of public amenity
- 2) Given that the site contains a number of individual trees, a more established wooded area, alongside parcels of young establishing scrub, in this instance it is appropriate for the tree stock to be considered as separate cohorts when making the TPO (as was done for TPO 24/00) as opposed to an Area TPO.
- 3) An assessment using industry recognised guidance 'Tree Evaluation Method for Preservation Orders' (TEMPO) - which takes into account 1) Amenity - condition, retention span, Relative public visibility, other special factors and 2) Expediency, based on the treat to the trees - gives a total score that does not warrant inclusion in a TPO.
- 4) The TPO in its current form is both inappropriate and indefensible - we would recommend that Reading Borough Council make it in a more refined format and extend an offer to meet onsite, and discuss the variation of the order to afford protection to only those trees which warrant this recognition

3.2 In response to the objections of both parties, Officers have the following comments:

- 1) Service of TPO to interested parties - There is only one Land Registry title for this area of land and no leasehold titles to suggest that there are any occupiers/tenants/interested parties for that piece of land other than the owners of the land. The land is identified as '*Allotment Gardens and Recreation Ground on the North side of Kentwood Hill*' and there are no buildings/depots registered on the land, so there would be no way of RBC knowing that anyone else was using/occupying the land.

There is also no postal address or postcode associated with this land in order for any documents to be sent. The registered owners of the land are 'THE OFFICIAL FOR CHARITIES of P.O. Box 2802, Reading, RG30 4GE on behalf of the trustees of The Poor of the Parish of Tilehurst.' (Tilehurst Poor's Land Charity/Tilehurst People's Local Charity) who were served. If there are tenants/occupiers using the land and TPLC cannot advise how these tenants/occupiers can be contacted, TPLC should be making their tenants aware of the order and passing on the information to them and details of how they can make comments/object if they wish to. The same would apply for the allotment holders - unless each of the allotments was registered and RBC had the address of each holder to send information to, we can only serve the owner of the land, who should then pass the information on.

However, officers can confirm that a copy of the TPO was posted to Mr Hague (tenant of the builders yard) at his Kentwood Hill address on 13 April 2020. In addition, officers have evidence that a copy of the TPO, with confirmation of the objection period, was emailed out to allotment holders on 14 March 2022 and that notices were put on the allotment information boards. At the same time as sending a copy of the TPO to TPLC, a copy was also posted to the adjoining landowners.

Officers are satisfied that they have complied with Regulation 5 of The Town and Country Planning (Tree Preservation)(England) Regulations 2012 with respect to service of the TPO.

- 2) The existing TPO (24/00) & expediency of TPO 2/22 - TPO 24/00 was served on 12 September 2000, so over 21 years ago. The condition of trees can change considerably over that time period; trees can be lost, and existing trees can become worthy of inclusion within a TPO. The review of existing TPOs can be prompted by a number of things, but mainly as a result of potential development. Reviews of large numbers of TPOs as a result of planning policy changes or the adoption of new documents, such as the Tree Strategy, is not feasible within RBC's limited resources.

The service of an Area TPO, as a temporary measure, to ensure all trees now worthy of inclusion in a TPO are retained for the immediate future was considered expedient in this instance. The objection from TPLC confirms that TPLC are selling the areas of land allocated for housing, so concern about potential pre-emptive felling is reasonable. Government guidance [[Tree Preservation Orders and trees in conservation areas - GOV.UK \(www.gov.uk\)](http://www.gov.uk)] states that:

'In some cases the authority may believe that certain trees are at risk as a result of development pressures and may consider, where this is in the interests of amenity, that it is expedient to make an Order. Authorities can also consider other sources of risks to trees with significant amenity value. For example, changes in property ownership and intentions to fell trees are not always known in advance, so it may sometimes be appropriate to proactively make Orders as a precaution.'

In addition, officers are advised by Aspect Arboriculture that they have been employed by the potential purchaser to deal with any required permissions under the TPO for clearance of 'scrub' for surveying purposes ahead of development proposals. This further supports the serving of the Area TPO in order to ensure clearance is justified via a tree works application.

Officer reference to the Area TPO being ‘temporary’ is the intention, with replacement by a more specific and up-to-date TPO at an appropriate stage. Given the evident intention for the allocated sites (included in the TPO Area) to be developed, the ‘appropriate’ time will be when development is approved and built. At that stage, it will be confirmed, through the planning process, which trees are retained, hence which are to be included in the replacement TPO. This is normal procedure and has been adopted on other sites in the Borough, such as the former BBC Caversham Park and Reading Golf Club; the latter also having an earlier, more specific TPO. If a more specific TPO were done now, it would result in limited RBC time and resources being wasted, as a second replacement TPO would be needed at a later date to reflect new development and take account of any trees lost through the development process. Officers do not therefore intend to accept the invitation to meet on site to amend the TPO at this point in time.

- 3) Abuse of TPOs as a campaigning weapon - whilst officers are aware of local concern about the sale of the land, RBC officers make recommendation for decisions to its Committee based on appropriate consideration of the law, which officers have done in this case
- 4) Significance of the Local Plan - The presence of sites WR3s (land off Kentwood Hill) and WR3t (land off Armour Hill), designated as being suitable for residential development, are acknowledged (see Appendix 3). The presence of the TPO does not change this or prevent development proposals from coming forward or ultimately being approved. Trees are a material consideration, taken in the ‘planning balance’ regardless of the site, and the specific criteria for allocation of both WR3s and WR3t are clear that adverse impacts on important trees should be avoided.

The potential need for an Environment Impact Assessment as part of any future development is not considered relevant to the TPO process.

The specific allocation of areas for residential development, within a wider area, does not prevent development being proposed to incorporate parts of that wider area. The extension of the Area TPO outside the allocated sites is therefore reasonable and can be reviewed at an appropriate time.

The above two points are both demonstrated on the Reading Golf Club site in Kidmore End Road. This was subject to a more specific TPO (served in 2002), following which an Area TPO was served in 2018 when the club was potentially being sold for development. Only part of that site is allocated in the Local Plan for development, however proposals came forward to include the whole site (within the RBC borough boundary) and was subsequently approved (211843/OUT). The presence of the Area TPO did not prevent development and the development extended outside the allocated land.

- 5) Amenity value - When considering whether (a) tree(s) is/are worthy of inclusion within a TPO, the first criteria we assess is that of amenity value. Government guidance [[Tree Preservation Orders and trees in conservation areas - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/guidance/tree-preservation-orders-and-trees-in-conservation-areas)] in relation to ‘amenity’ states the following:

“‘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”.

In terms of ‘visibility’, Government advice goes on to say:

‘The trees, or at least part of them, should normally be visible from a public place, such as a road or footpath, or accessible by the public.’

It was established in the case of *Wilks Properties Ltd Vs Royal Borough of Kensington & Chelsea* (Royal Courts of Justice Case No: CO/2334/2010 dated 13/01/2011) that collective ‘private’ views of a tree(s) constitute a ‘public’ view.

It is accepted that each individual tree on the land will not be a specimen and that each tree is unlikely to be appreciated as an individual in visibility terms. This is partly reflected in TPO 24/00 which lists some trees individually but others as Groups and some as Areas. Part of the land falls within the ‘West Reading Wooded Ridgeline’ - a designated Major Landscape Feature under Policy EN13 of the Local Plan. This recognises the value of this landscape feature, characterised by its amenity value, largely as a result of its collective tree cover.

When viewed by the passing public on Armour Hill and Kentwood Hill, the land has an overall green, treed appearance, provide amenity value to the street scene.

The site will be viewable and provide amenity value to those residents living adjacent to the land.

In view of the above, officers are satisfied that the TPO is warranted in terms of amenity.

It should also be remembered that ‘amenity’ is not the only consideration when determining whether a TPO is expedient. The nature conservation value of the land on which the trees sit can also be considered. Officers are aware that there is badger and bat activity on site, and fully expect there will be nesting birds. This adds to the value of the vegetation as a whole.

- 6) Common Aspects Of Amenity / Community Value - The decision by RBC to refuse to list the land covered by the new TPO as an Asset of Community Value (ACV) is not considered relevant to the expediency of the TPO. Amenity value is discussed above.
- 7) Impact on sale of the land - under Section 197 of the Town and Country Planning Act 1990, trees are a material consideration in planning proposals, regardless of their TPO status; a point that developers will be aware of. In addition, the allocation text for both the Kentwood Hill and Armour Hill sites states that development should, “..avoid adverse impacts on important trees”, which include but are not limited to those protected by TPO. The presence of an Area TPO will not change the approach to any planning proposals that come forward insofar as officers will consider the Arboricultural Reports put forward to support proposals and aim to retain only those trees whose retention is appropriate, in view of their condition, and in the planning balance. As mentioned above, Aspect Arboriculture have been employed by the potential purchaser to deal with any required permissions under the TPO for clearance of ‘scrub’ for surveying purposes ahead of development

proposals hence the TPO does not appear to have halted development considerations.

- 8) Lack of prior consultation - this is normal procedure for sites to be developed and prevents pre-emptive felling of trees whose retention might have otherwise been discussed and agreed.

4. CONCLUSION AND RECOMMENDATION

- 4.1 Officers consider that an Area TPO is warranted due to the age of TPO 24/00, the intention to sell the land and the intended development proposals. A more specific TPO can be made at a later stage to replace the Area TPO, but the Area TPO should be confirmed in order to protect all trees in the meantime and until development proposals are determined and implemented. The recommendation is therefore to confirm the TPO.

5. LEGAL IMPLICATIONS

- 5.1 Preparing, serving confirmation and contravention of TPO's are services dealt with by the Council's Legal Section.

6. FINANCIAL IMPLICATIONS

- 6.1 None.

7. EQUAL OPPORTUNITIES IMPLICATIONS

- 7.1 None.

8. SUSTAINABILITY IMPLICATIONS

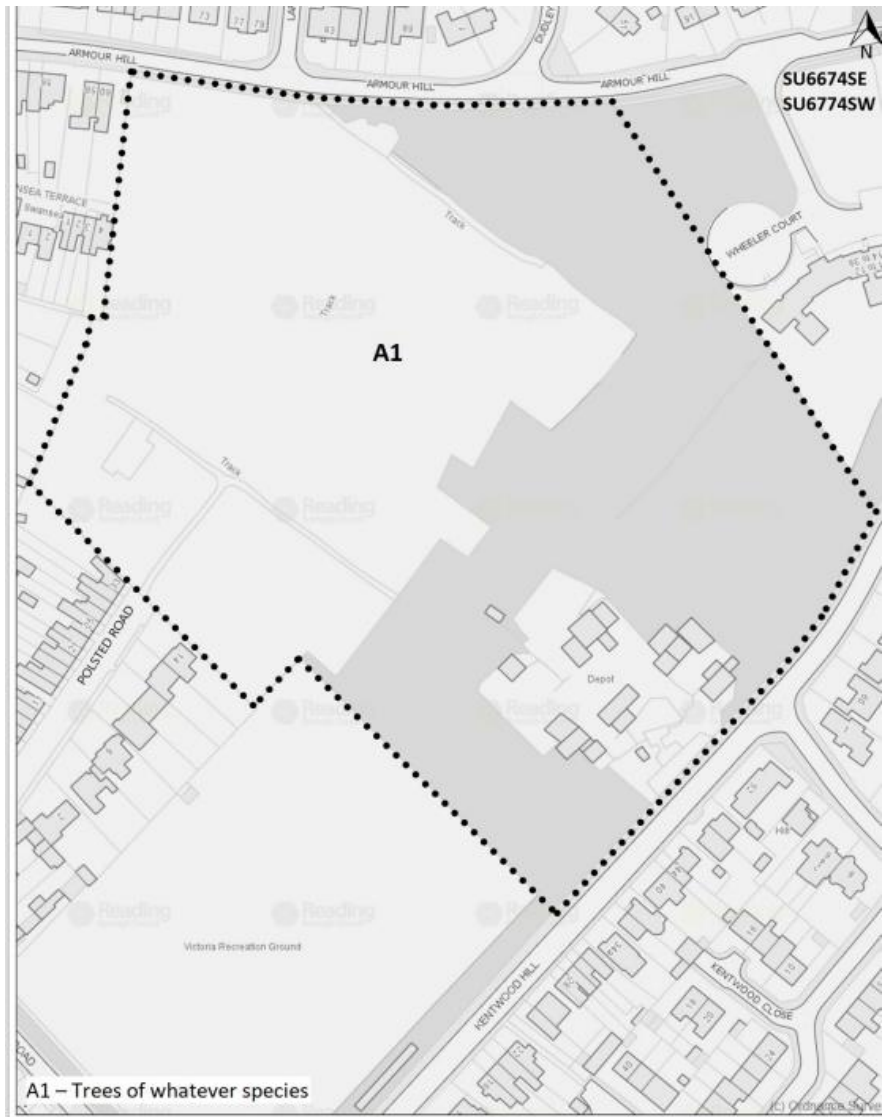
- 8.1 The aim of the TPO's is to secure trees of high amenity value for present and future generations to enjoy. Trees also have high environmental benefits through their absorption of polluted air and creation of wildlife habitats.

9. BACKGROUND DOCUMENTS

- 9.1 Register of Tree Preservation Orders
- 9.2 Plan of TPO 2/22, relating to Tilehurst Allotments, Armour Hill / Kentwood Hill, Reading (Appendix 1)
- 9.3 Plan of TPO 24/00, relating to Tilehurst Allotments, Armour Hill / Kentwood Hill, Reading (Appendix 2)
- 9.4 Local Plan Extract (Appendix 3)

Officer: Sarah Hanson

Appendix 1 - TPO 2/22



Title: Tree Preservation Order - Tilehurst Allotments, Armour Hill/Kentwood Hill, Tilehurst, Reading

Drg. No: E2996

Date: March 2022

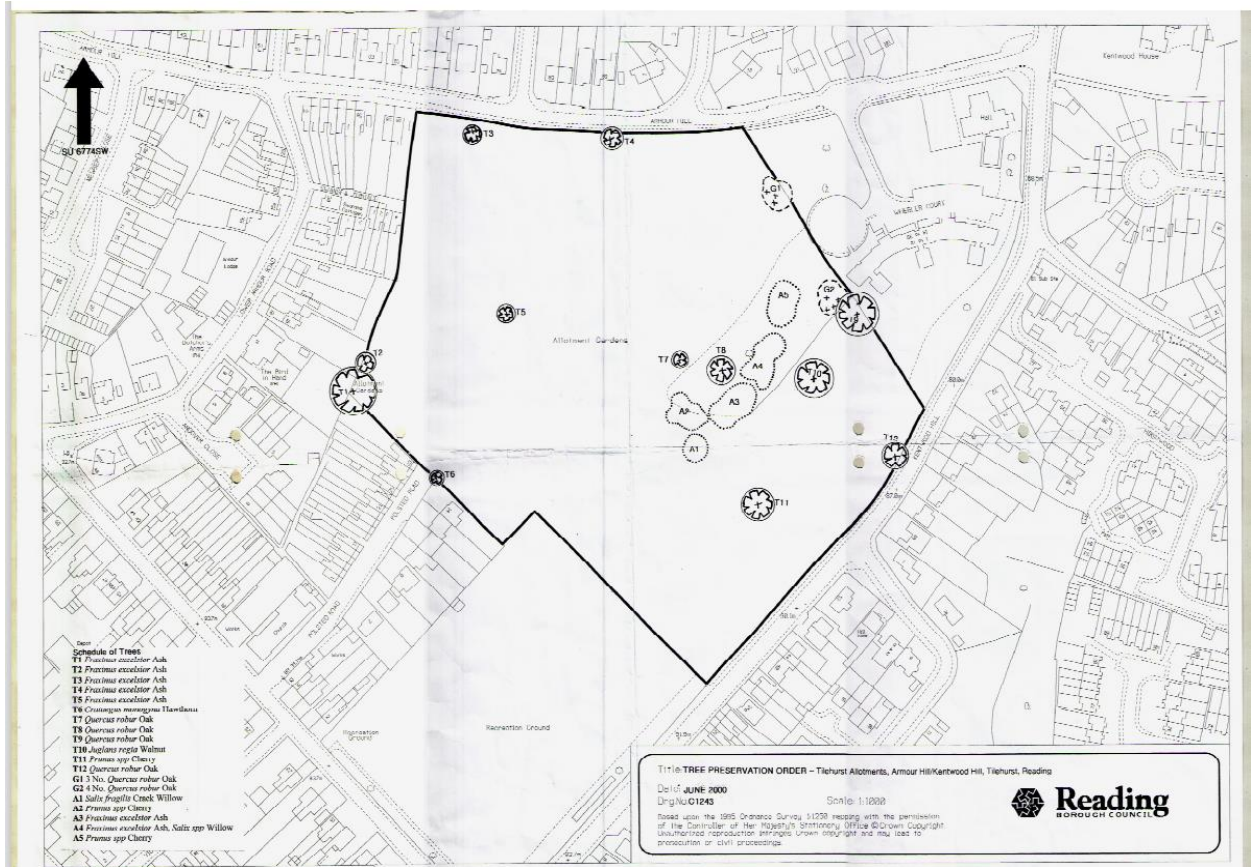
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Appendix 2 - TPO 24/00



Appendix 3 - Local plan allocated residential development sites, Biodiversity Opportunity Area (EN12) and Major Landscape Feature (EN13)

