

COMMITTEE REPORT

BY THE DIRECTOR OF ENVIRONMENT & NEIGHBOURHOOD SERVICES
READING BOROUGH COUNCIL
PLANNING APPLICATIONS COMMITTEE: 3 April 2019
TITLE: OBJECTION TO A TREE PRESERVATION ORDER AT READING INTERNATIONAL
BUSINESS PARK, A33, READING

Ward: Whitley

RECOMMENDATION

That the Tree Preservation Order be confirmed in its current form

1. PURPOSE AND SUMMARY OF REPORT

- 1.1 To report to Committee objections to Tree Preservation Order No. 12/18 relating to 'Land south-west of the A33 and A33/Imperial Way Junction', (Reading International Business Park), Reading (copy of TPO plan attached - Appendix 1).

2. BACKGROUND

- 2.1 Officers were made aware of the intention to fell trees at the above site through a TPO enquiry. Following a site visit, it was determined that a number of individual trees and the 'woodland' strip facing the A33 provided important amenity value on this main route in/out of Reading hence a Tree Preservation Order was served on 31 October 2018.

3. RESULT OF CONSULTATION

- 3.1 A first objection to the TPO was received on 29 November 2018 from Aspect Tree Consultancy on behalf of Arlington Business Park GP Ltd based on the following concerns:
 1. The site has the benefit of an extant planning permission (09/00685/VARIAT - Reading International Business Park, Phase 3) that requires the removal of some trees within part of 'W1' woodland. Therefore a TPO has been imposed on trees that already have consent for removal. The principles of developing the site are well established.
 2. Many of the trees will be compromised by the instigation of the approved consent due to ground level changes required to implement. The approved landscape scheme cannot be implemented if trees in W1, outside the direct footprint of the approved development, are retained.
 3. The use of a woodland designation is inappropriate for land that is not a woodland, i.e. the site has been used for commercial purposes with hard standing and the remains of structures present, with vegetation having arisen through these structures. The 'woodland' is not identified as such on the National Woodland Inventory, nor does it have characteristics of a woodland. By protecting trees that subsequently grow, it may prevent the landowner from carrying out reasonable management of the land.
 4. The use of a woodland designation is a misuse of the Council's powers as the Council does not have the powers to change the use of land using a TPO - ref: legal case 'Glynn Evans V Waverley Borough Council'.

3.2 In response to the objections from Aspect Tree Consultancy, Officers have the following comments:

In relation to points 1 & 2, Officers were unclear whether the planning permission cited had been implemented, as in order to do so, demolition would have had to have occurred in a small window of 3-4 days between the date of the discharge of pre-demolition conditions and the expiry of the planning consent, hence Officers questioned this (this is dealt with below). Officers do, however, acknowledge that full planning permission does override a TPO, hence if full planning permission does exist and was implemented, the TPO would not prevent the felling of trees where removal was necessary to implement that consent.

In relation to the retention of existing trees affecting new planting, an indicative landscape plan was submitted with the original planning permission (00/01447/FUL). However, conditions attached to this planning approval (and subsequent variations) required details of landscaping and tree planting to be submitted for approval prior to commencement (excluding demolition), indicating that landscaping was not approved, per se, as part of that permission. The Council has not received a discharge of conditions application to agree the landscaping/tree planting, hence conflict is not certain.

Assuming an extant planning permission exists, given that the date of construction is unknown it would seem reasonable to suggest that the TPO should be confirmed and the retention, or otherwise, of trees on site be determined during the consideration of any potential future planning application if plans for the site change, or are confirmed through the formal discharge of conditions.

In relation to point 3, The Town & Country Planning Act 1990 requires TPOs to fall into 4 classifications, a single TPO being able to contain a combination of these: Individually specified trees (T); Groups of trees (G); Woodlands (W) and Areas (A). When deciding on the most appropriate type of TPO, a Local Authority is confined to these classifications. The TPO lists 5 trees as individuals as they merited this individual classification. A Group TPO was not considered appropriate considering the tree cover which does not lend itself to picking out individual trees to include within this classification, as is required. An 'Area' classification could have been used, however as the area of trees in question appeared to be more 'woodland like' and being mindful of Government advice on limiting the use of the 'Area' classification, the 'Woodland' classification was deemed the most appropriate. Unlike the 'Area' classification, Woodland TPOs protect all new trees which subsequently grow after the TPO is served, hence allowing regeneration and future tree coverage, important on a main route such as the A33. As to whether or not the trees can be reasonably described as a 'woodland', the Act does not define the term 'woodland'.

The TPO does not prevent the owner from carrying out 'reasonable management'. Approval will be required for tree works, however, the Town and Country Planning (Tree Preservation)(England) Regulations 2012 allows for multiple operations to be approved under one tree works application, making woodland management easier to agree. The removal of non-tree species would not of course require permission so could be done without reference to the TPO.

In relation to the last point, officers do not accept that *'the use of a woodland TPO goes beyond the Council's powers as it effectively changes the use of the land from its current one'*. Officers have carefully read the judgement provided in support of this claim (*Glynn Evans v Waverley Borough Council*, dated 12 July 1995) and note that it relates to an appeal against the confirmation of a TPO which was changed from the 'Area' classification to the 'Woodland' classification on confirmation, which the judge deemed to be unacceptable. Officers cannot see the relevance of this to the woodland classification changing the use of the land. In any case, the service of a 'Woodland' Tree Preservation does not, and cannot, formally change the use of a site/land. The Town and Country Planning (Use Classes) Order 1987 (as amended) puts uses of land and buildings into various categories ('Use Classes'). Planning permission would generally be required to formally change the 'use' unless legislation allows the change between uses or an alternative use can be established (with a Certificate of Lawful Development) after 10 years of uninterrupted use. The current formal use of the site has not been confirmed.

3.3 Following the responses offered by officers to the first objection, a second objection letter was received on 22 February 2018 from Barton Willmore, the planning consultant for Arlington Business Park GP Ltd, based on the following points:

- Extant planning permission does exist (evidence of this is provided) which would override a TPO and could be implemented at any time following discharge of conditions, for which there is no time limit, resulting in the removal of some of the trees within the woodland strip (W1) both directly and to allow for construction.
- There is no intention to unnecessarily remove trees from the northern/A33 boundary so this screen will be fundamentally maintained; the topography and drainage arrangements of this part of the site making it non-commercially viable to develop that land. The TPO therefore serves no purpose but may hinder good management; the TPO unnecessarily complicating the work that may need to be implemented to the existing stream culvert.
- The 'green vegetation screen' on the east boundary following implementation of the approved consent would be replaced through planting as part of the extant permission and the same would be expected as part of any newly proposed application. Applying the TPO will add unnecessary complication to the forthcoming application.
- It is considered that Officers have misinterpreted the case law provided and that the 'change of use' question was in relation to the requirement to change how a piece of land is managed as a result of the designation of a 'woodland' TPO, not in terms of Town and Country Planning use classes. It is considered that the case law should be reviewed again and that Officers are trying to use a TPO to achieve something where actually there is not an appropriate form of TPO that could be applied to achieve tree retention on the site.
- If pursued, the woodland area in the TPO should be amended to reflect the proposed area of development footprint in order to reduce complication for any future planning application, which would maintain a 'green screen' in areas where it is not considered will be impacted and which will be strengthened through additional planting. The TPO should be applied as a group, not a woodland.
- The purpose of objecting to the TPO to date has been to preserve the unfettered development potential of the site, ensuring viable redevelopment, by not placing additional restrictions on the site, which

is an allocated site in the Local Plan and a site the Council is reliant on for development.

3.4 In response to the objections raised, officers have the following comments:

Officers acknowledge the implementation of the planning permission by the evidence provided, which demonstrates that demolition has occurred within the required time period, i.e. that an extant planning permission exists.

Officers acknowledge the confirmation that there is no intention to unnecessarily remove trees, which is positive on such a prominent site. In relation to the indication that the presence of the TPO will '*hinder good management*' and '*unnecessarily complicates the work that might need to be implemented*', this objection was raised in the letter of 27 November 2018 from Aspect Tree Consultancy and responded to (see response in paragraph 5 of 3.2 above).

In relation to the claim that the TPO will add '*unnecessary complication to the forthcoming application*', both Officers and the objector have acknowledged that planning permission overrides a TPO, therefore Officers do not agree that the TPO would complicate matters, particularly given the extant planning approval.

The reasons why a 'woodland' TPO was used have been explained in Officer's response to Aspect Tree Consultancy objections (see paragraph 4 in 3.2 above); TPO type being confined to the four classifications.

It is clear that Officers are interpreting the case law provided (Glynn Evans vs Waverley Borough Council) differently to the objector. The matter established in this case was whether it is acceptable to change a TPO designation from 'Area' to 'Woodland' at confirmation stage thereby including additional trees (in the future, as they grow) within the Order without allowing the relevant parties the opportunity to comment before the Order was confirmed. i.e. it was a question of whether this modification was permitted under The Town and Country Planning Act. It does not discuss the merits of the use of a 'woodland' TPO in general or comment on when and where this should or should not be used.

The objection requests that the Local Planning Authority consider only placing TPOs on the trees that would not 'affect' potential development proposals on site. Taking that stance with developers across the Borough would not be appropriate. Officers are, however, mindful of the extant planning permission and potential changes to this and hence, as is common, would propose to serve an amended TPO at an appropriate stage, i.e. when development plans are confirmed and implemented either through a discharge of conditions application or via a new planning approval. The current TPO can therefore effectively be considered as temporary, albeit it would have to be temporary in a confirmed form. In the meantime, it is appropriate that the new Tree Preservation Order (if confirmed) can be used as a means of enforcement to ensure retained trees are adequately protected if permitted development works are implemented on site.

3.5 Following the responses offered by Officers to the second objection, a third objection letter was received on 14 March 2018 from Barton Willmore, the planning consultant for Arlington Business Park GP Ltd, based on the following points:

1. Section 198 of the Town & Country Planning Act 1990 provides that Local Planning Authorities may only make provisions for the preservation of trees if '*it is expedient in the interests of amenity*' to do so. Local Authorities need to exercise their judgment on amenity and assess amenity value in terms of 1) visibility, 2) the individual, collective and wider impact of the trees and 3) any other factors considered relevant; with TPOs only being used if the removal of the trees would have a significant effect on the local environment and its enjoyment by the public. The Authority must also provide that the TPO would bring a reasonable degree of public benefit in the present or future.

There is no evidence to date that the amenity value of the trees has been carefully considered as part of the process. If a TPO is issued without considering amenity, RBC will have acted '*beyond its powers*' or '*ultra vires*' and the TPO would be subject to a challenge in the High Court.

Confirmation has been given that there is no intention to remove trees in a manner that would affect the environment or enjoyment, hence a TPO is not necessary to preserve the amenity of the area. The trees on the southern side are not of good quality and do not justify inclusion within a TPO. These trees do not provide a major contribution to the landscape or character of the site. There is no amenity argument which supports the confirmation of a TPO in the form proposed and RBC would be acting unreasonably to conclude that it is in the interests of amenity to confirm the TPO.

Also in relation to amenity, Government guidance suggests it may not be expedient to serve a TPO if the trees are under '*good arboricultural or silvicultural management*' but it may be expedient if there is '*a risk of trees being felled, pruned, damaged in ways which would have a significant impact on the amenity of the area*'. Barton Willmore have highlighted that proposed changes to the site will not affect amenity and Arlington have contracted a tree consulting firm to review the trees which shows they are appropriately well-informed and capable of implementing proper tree management without the need for a TPO. There can be no argument that a TPO is expedient on this site.

2. With reference to extant planning permission 09/00685/VARIAT, a TPO would be pointless on trees that require felling in order to implement the planning consent.

If any further planning application was submitted this would be granted after the TPO is confirmed (on or before 31 April 2019) and therefore would not supersede the TPO. Section 70(2) of the TCPA 1990 requires the Council to consider '*material considerations*' when planning permission is sought. If the TPO is confirmed, this will add unnecessary complexity and cost to the planning application process and potentially limit the development potential of the site.

RBC have proposed that an amended TPO be served when new development plans are confirmed and that in the interim, the proposed TPO would be used as a means of enforcement to ensure retained trees are adequately protected. There is nothing in the TPO Regulations that stipulates a TPO can be granted solely on a temporary basis and RBC have no reason to think the trees are at risk in the interim. Arlington also take no comfort in Officer's comments regarding a review of the TPO following confirmation of plans for the site. It is not satisfactory that Arlington's development proposals will be impacted by RBC's timetable in amending the TPO. Instead, RBC should a) refrain from making the TPO until development proposals have reached a more advanced stage, or b) make the TPO in accordance with the suggested

amended outline to the 'woodland' (see appendix 2) to avoid future conflict with development proposals. This will avoid use of Council resources in amending the TPO and will mean that RBC can support Arlington in securing the re-development of the property instead of adding an unnecessary administrative burden.

3. The TPO Regulations provide that an Authority cannot confirm a TPO unless they have considered all objections and representations which have been duly made. If the Council confirm the TPO without giving proper considerations to the objections and representations raised by Arlington, then they will have acted beyond their statutory powers and there will be grounds for a challenge in the High Court. It is clear that objections raised by Arlington (in relation to points 1 & 2 above) have not been fully addressed by RBC. Confirmation is sought that RBC has undertaken to consider Arlington's objections in the context of its regulatory duty. Arlington reserves its position to raise a statutory challenge if RBC proceeds to adopt the TPO.

3.6 In response to the objections raised in the letter of 14 March 2019, Officers have the following comments:

1. 'Amenity' is not defined in law. Government guidance states that *'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'*

Prior to deciding whether a TPO is appropriate on any tree(s), it is standard practice to consider their amenity value with Officers being mindful of that fact that this is the primary factor to consider in making a TPO. Amenity was considered in this case as one would expect it to be. Given the location of the trees on a primary route in / out of Reading, their high visibility is clear to anyone. As a band of trees fronting the busy A33 they therefore provide amenity value to the thousands of people passing the site on a daily basis. In terms of amenity, Officers are satisfied that the trees provide sufficient amenity to warrant a TPO and photographs to demonstrate this are provided at the end of this report.

For information, the tree belt fronting the, directly adjacent, Tesco site is also subject to a TPO due to its amenity value on this main route. This shows a consistent approach to the preservation of trees in the Borough. The A33 is an identified 'Treed Corridor' within the Council's adopted Tree Strategy and as such the Council has a commitment to enhance these routes with new planting and has a commitment to protecting the existing tree stock.

Trees on busy routes such as this also provide additional benefits such as screening, softening the urban landscape, as well as acting as noise barriers and pollution barriers - particularly important this close to the M4 Motorway.

The objection letter goes on to question the expediency of the TPO quoting Government Guidance that suggests it may not be expedient to serve a TPO if the trees are under *'good arboricultural or silvicultural management'* but it may be expedient if there is *'a risk of trees being felled, pruned,*

damaged in ways which would have a significant impact on the amenity of the area'.

The Council has no 'understanding' with Arlington and is not familiar with the way in which they manage their land. Contracting a tree consulting firm to review the trees is not evidence enough to demonstrate that Arlington will implement appropriate tree management that will not impact on local amenity. It is important to note that the TPO was prompted by a TPO enquiry from a tree surgeon who had been asked to clear the site, i.e. all trees were at risk (as far as Officers were concerned) of being felled, not just those whose removal would be necessary if the extant planning permission were implemented. A TPO is therefore considered expedient.

It has been implied in the letter of 14 March, and in previous letters, that individual trees are not of good quality hence *'do not justify inclusion in a TPO'*. The four different classifications for TPOs were discussed previously; the individual (T) classification being the only one appropriate where trees are individually worthy of a TPO, as has been used on the five individuals in this TPO (which are not under debate). It is therefore implied and generally accepted that the other classifications will inevitably include trees that individually are not specimens but collectively, whether as a Group, Woodland or Area, provide sufficient amenity value to warrant a TPO. The quality of individual trees within a woodland is not therefore relevant.

2. Officers and the objectors have acknowledged in previous letters that full planning permission, if implemented, would override a TPO. Officers do not currently know what development will ultimately be implemented. Protecting all trees listed in the meantime is appropriate.

The objection letter suggests that the presence of a confirmed TPO will mean that trees will then be a material consideration, adding *'unnecessary complexity and cost to the planning application process, and potentially limit the development potential of this key employment site'*. Trees are a material consideration whether or not they are protected. Section 197 of the TCPA states that *'it shall be the duty of the LPA to ensure, whenever it is appropriate, that in granting planning permission for any development adequate provision is made, by the imposition of conditions, for the preservation or planting of trees...'*. It does not state *'trees subject to a Tree Preservation Order'*. When providing comments on the impact of a development on trees, Officers provide the same comments whether or not trees are protected. The TPO will therefore add no 'additional complexity', as far as Officers are concerned, when considering any potential changes to the approved development or any potential new development. The same level of arboricultural information will be expected, regardless of the protection status of trees on a site.

Tree Preservation Orders are commonly used on a 'temporary' basis, the temporary nature sometimes being months and sometimes years. The planning process, from submission of an application to completion of a development, can take many years. Often, therefore, a TPO is confirmed in whatever format is deemed appropriate with the intention to review it following completion, when trees may have been felled and others planted which may warrant inclusion. Officers are not aware of anything within the relevant legislation that suggests this is not an appropriate or allowable course of action.

The objections suggest that the agent/owner do not believe that the Council will review the TPO at an appropriate point in the future. Officers can offer no further comfort other than to suggest that it would be in-line with good practice to ensure TPOs are up-to-date and appropriate and it would be of benefit to the Council (as well as landowners) to do this.

The objection, as per the previous letter, implies that the Council should not make a TPO until development proposals have more or less been finalized and that the TPO should be amended in line with the objector's suggestion. In effect they are asking for the TPO to be in the form that the owners desire and made at the owner's convenience. As previously advised, this is not an appropriate stance to take with any developer.

3. Officers have responded to the points raised in each of the letters received objecting to the TPO. Any claim that Officers have not responded to points raised is disputed. Officers have advised that objections set out in all three letters will be included within this Committee report along with the responses Officers have provided. Officers are therefore following due process in considering the objections prior to determining (by Committee) if the TPO should be confirmed.

The last paragraph of the letter of 14 March requests confirmation of *'the process that RBC has undertaken to consider Arlington's objections in the context of its regulatory duty pursuant to regulation 5(1) of the TPO Regulations'*. Article 5(1) relates to the appropriate service of the Order to which no issues have been raised. Officers are satisfied that all relevant parties were served a copy of the Order and that it contained all required information. Article 7(1) requires Authorities to first consider objections before confirming a TPO and it is hoped that through correspondence and confirmation that the objections will be considered at Planning Application Committee, that Arlington is satisfied due process is being followed.

4. CONCLUSION AND RECOMMENDATION

- 4.1 Officers have responded fully to the multiple points raised and consider that it is reasonable to confirm the current TPO, in its existing form, for the reasons given above.

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

- 6.1.1 Administrative.

7. EQUAL OPPORTUNITIES IMPLICATIONS

- 7.1 In assessing objections to TPOs, officers will have regard to Equality Act 2010, Section 149, a public authority must, in the exercise of its functions, have due regard to the need to—
- eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
 - advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;

- foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
- 7.2 In terms of the key equalities protected characteristics it is considered there would be no significant adverse impacts as a result of the making of this TPO.

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 Planning Section's Tree Preservation Order Directory
- 9.2 Register of Tree Preservation Orders
- 9.3 Plan of TPO 12/18 relating to Land south-west of the A33 and A33/Imperial Way Junction (Reading International Business Park), Reading (Appendix 1)

Officer: Sarah Hanson



Woodland strip from Tesco warehouse access going south along A33

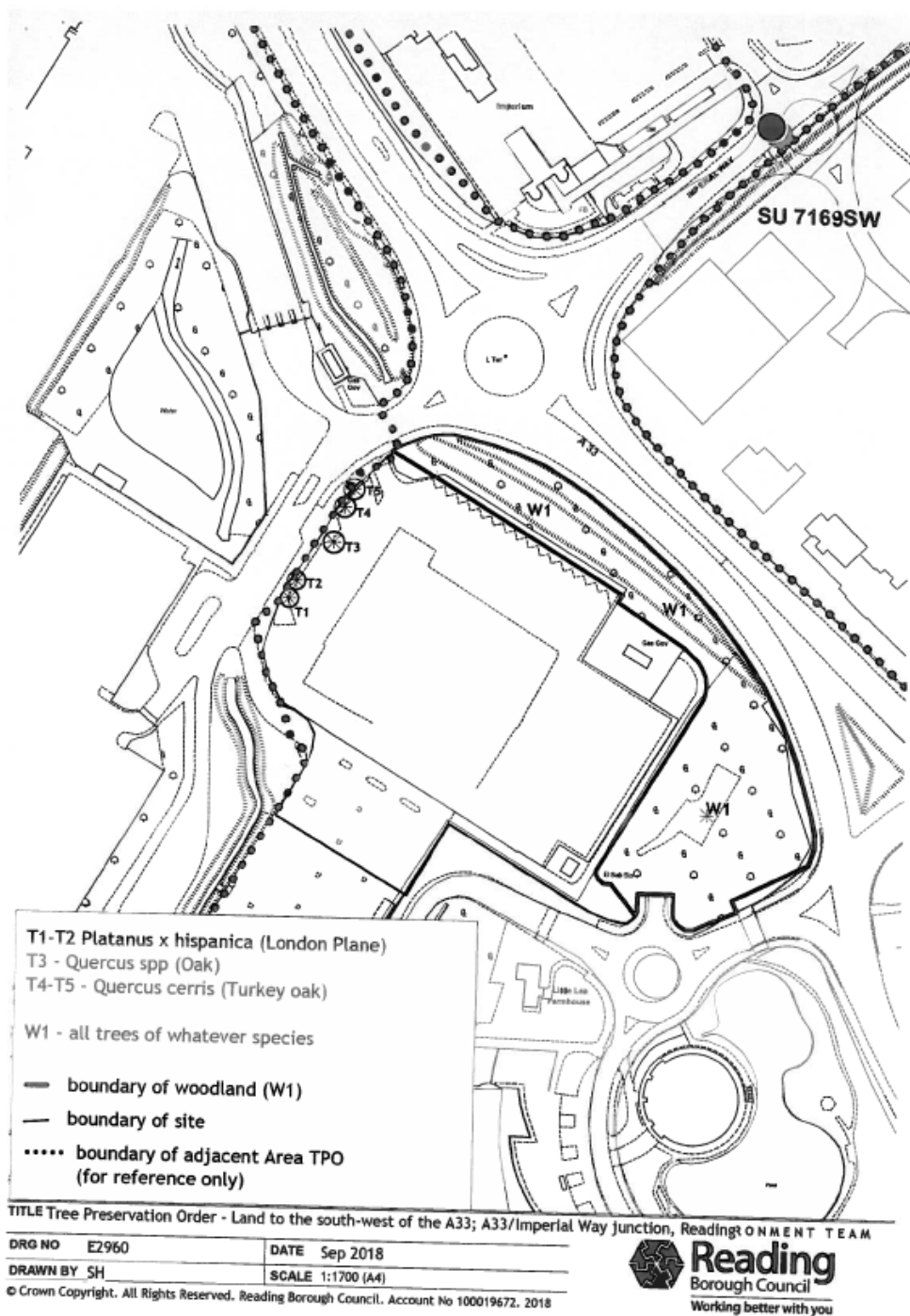


A33 frontage



Woodland strip on A33 frontage at junction with Reading International Business Park

Appendix 1



Appendix 2
Objector's suggested amended TPO boundary for W1 (woodland)

