

On land at 22, 24, 26, 28 and 30 Old Ferry Drive, Wraysbury and land north west of the junction of Kingswood Creek and Old Ferry Drive and land south of Old Ferry Drive and Friary Road, Wraysbury, Berkshire.

1. Background:

Tree Preservation Order (TPO) 44 of 2008 was created in October 2008 on land at Old Ferry Drive, Wraysbury, Berkshire and was initiated following development interest across some sections of the land. The TPO was made as a precautionary measure to deter the indiscriminate removal of trees prior to any full planning application being submitted and determined.

The Order originally related to two areas of trees of whatever species and four parcels of woodland to the north of Old Ferry Drive and to one parcel of woodland, known locally as The Kayles, to the south of Old Ferry Drive. It is proposed to modify the Order on confirmation as per the specification below:

T1	Walnut (<i>Juglans regia</i>)	Located at 30 Old Ferry Drive.
G1	2 x Walnut (<i>Juglans regia</i>) 1x Horse chestnut (<i>Aesculus hippocastanum</i>) 2 x Ash (<i>Fraxinus excelsior</i>) 2 x Sycamore (<i>Acer pseudoplatanus</i>)	Located along the eastern boundary of 30 Old Ferry Drive.
A1	Trees of the following species: Beech (<i>Fagus sylvatica</i>) Sycamore (<i>Acer pseudoplatanus</i>) Lime (<i>Tilia</i> sp.) Horse chestnut (<i>Aesculus hippocastanum</i>) Ash (<i>Fraxinus excelsior</i>) Yew (<i>Taxus baccata</i>) Willow (<i>Salix</i> sp.) Hazel (<i>Corylus avellana</i>) Norway maple (<i>Acer platanoides</i>)	Located at 26 Old Ferry Drive.
A2	All trees of whatever species	Parcel of land east of 22 Old Ferry Drive
W1	All trees of whatever species	Located on the south side of Old Ferry Drive and Friary Road
W2	All trees of whatever species	Located north west of the junction of Old Ferry Drive and King John's Close
W3	All trees of whatever species	Located on land to the north of 22 Old Ferry Drive
W4	All trees of whatever species	Located on land to the south and west of 22 and 24 Old Ferry Drive
W5	All trees of whatever species	Located on land to the north of 22 Old Ferry Drive
W6	All trees of whatever species	Located on land to the east of 22 and 24 Old Ferry Drive

2. Objections:

Letters of objection dated 22nd October 2008, 12th November 2008, 20th November 2008 and 29th January 2009 were received in respect of the woodland W1 and area A1, as it relates to 28 Old Ferry

Drive, from Mr Tim O'Keefe owner of the land and from Mr Chris Corcoran of Southern Planning Practice acting on his behalf. All of these letters can be viewed in full in the TPO file and are summarised below:

- The Order is a large and complex one; the justification of development interest 'across some sections of the land' is too vague. The justifications given for the imposition of the TPO do not identify which of these applies to which of the varied parcels identified in the Order. It does not meet the requirements of government guidance for serving orders.
- W1 contains trees of very mixed quality in terms of size, condition and density, species etc. Much is poor quality scrub and bramble with the exception of the Horse chestnut trees around the boundary and even these are in poor condition. The contribution to public amenity is uneven. The southwestern half of W1 contains a large area with no trees and should be excluded from the Order.
- This woodland is relatively new; it would originally have been open meadow and marshland and it appears the whole area was in cultivation within the last 30-40 years. Consequently none of the woodland is ancient woodland.
- None of W1 is visible from the Thames and therefore does not form part of its setting. The woodland is only visible from the roof terrace of the Air Force Memorial on Runnymede Hill and at such a shallow angle that only the facing perimeter trees are visible.
- The frontage trees would protect the amenity of Old Ferry Drive and Friary Road and the woodland views from the public footpath bi-secting W1 could be protected by narrow belts adjacent to the footpath and running along the southern boundary of the eastern portions.
- The historical link is no reason for a TPO. W1 is a significant distance from King John's Hunting Lodge and is separated from it by other woodland and trees. The Hunting Lodge only gained that name during the Victorian period and before that would have been a hall farm house. The site of the Saxon Palace is not identified. How does W1 contribute to its setting?
- W1 is well protected already being within the Metropolitan Green Belt and the flood plain. Any significant tree clearance would represent a material change and would require planning consent and a forestry commission felling licence.
- When the Royal Borough developed the local structure plan in the 1990s, W1 was not considered worthy of protection or any other environmental designation and the condition of the site has deteriorated since then, having been abused by residents for dumping and burning rubbish, riding scramblers and other undesirable activities.
- That the woodland is a habitat for possible protected species is hypothetical. The onus is on the Council to justify the protection of the woodland for these reasons. Government advice indicates nature conservation should not justify TPOs on its own.
- With respect to Area A1, 28 Old Ferry Drive is a commercial boatyard without any trees and should be excluded from the Order. In considering protection of trees at adjoining properties, numbers 30 and 26, their relationship to the boatyard needs to be taken into account particularly where trees overhang the boatyard and inhibit its operation.
- Two significant trees have been omitted from the Order, a Willow at King John's Close and a Copper Beech at 32 Old Ferry Drive.
- The TPO was instigated as the result of seeking prior consultation for a prospective planning application and is clearly being used as a political tool to obstruct development.
- Local residents have been misled by a minority interest group, who are attempting to misappropriate the land for their own purposes, into believing that the TPO is more than it is. It has been falsely implied that the TPO would prevent any development on the site, allow freedom of access to private property and that the proposals for W1 would take away the leafy lane approach.

Mr and Mrs Lansiaux of 30 Old Ferry Drive while supporting the order in respect of the woodland and the trees in area A1 along their boundary with the boatyard at 28 Old Ferry Drive, feel that it is unnecessary for the whole of their garden to be included within the TPO.

Miss Pugh whose property, 26 Old Ferry Drive lies within area A1, supports the TPO in general, but writing in response to the proposed modifications requests that the informal area of her garden should be excluded from the TPO and that the order should only apply to trees on the perimeter.

Mr Philip Harrison writing on behalf of Brenda Roberson, owner of King Johns Hunting Lodge does not understand the intent of the TPO with regard to this garden, which has been maintained in a park-like way for the last 28 years.

Letters of support for the TPO were received from The Kayles Action Group, Old Ferry Drive Residents Association and from 27 local residents. The letters refer to the beauty and sense of countryside afforded by the woodlands, and to this being a unique historic site dating back to the 11th century. The wildlife is described as fantastic considering the location, within a few miles of Heathrow Airport and the M24 and M25. The public footpath through the woods allows both visitors and local people to enjoy this unique environment. Several long-term residents refer to the Kayles being used since the early 1950s for dog walking, riding and by local school children studying the fauna and flora of the area.

3. Responses to the objection and justification for the Order:

Under the Town and Country Planning Act (1990) local planning authorities may make a Tree Preservation Order (TPO) if it appears to them to be expedient in the interests of amenity to make provision for the preservation of trees or woodland in their area. The Act does not define amenity, nor does it prescribe the circumstances in which it is in the interests of amenity to make a TPO. In the Secretary of State's view, a TPO should be used to protect selected trees and woodlands if their removal would have a significant impact upon the local environment and its enjoyment by the public. Local planning authorities should be able to show that a reasonable degree of public benefit would accrue before the TPO is made or confirmed. The trees, or at least part of them, should therefore normally be visible from a public place, such as a road or footpath. In this case most of the trees within the TPO can be seen from a public vantage point, such as the River Thames, Friary Road, Old Ferry Drive, King John's Close, Kingswood Creek and the public right of way that runs south then in an easterly direction through the woodland W1. There are also significant views from the open area of land to the south, which has a number of well-established paths criss crossing it and is used by residents for walking their dogs. Longer distance views of the site can be seen from the hillside behind Runnymede.

Trees may be worthy of preservation, amongst other reasons, for their intrinsic beauty or for their contribution to the landscape. Therefore, the legislation makes no distinction between species or size. The local planning authority may make a TPO when it is believed there is a risk of a tree being adversely affected in ways that would have a significant impact on the amenity of the area. This TPO was prompted as a result of the pre-application advice for a marina, which would result in the loss of W1 and potentially trees on neighbouring properties next to the boathouse at 28 Old Ferry Drive. The Council was also aware that no 26 Old Ferry Drive is for sale and the intentions of future owners, with regards to trees are therefore unknown. Whilst no identified threat was apparent for the remainder of the properties, given the potential for change in the area, other developments may be sought on adjoining properties in the future. It should be noted that in terms of a TPO, it is not necessary for the risk to trees to be immediate. Following a site visit by one of the Council's Arboricultural Officers, it was therefore considered prudent to initiate a TPO. As the Officer was unable to gain access to individual properties at that time, a provisional 'Area' and 'Woodland' TPO was created. However, it was acknowledged that the TPO would require some refinement, as there were likely to be some trees, especially within the 'Area' designations, not worthy of protection. Local residents were therefore invited to contact the Council's tree section so that arrangements could be made for an Arboricultural Officer to properly survey the trees at individual properties. As a result of this more considered assessment, modifications to the Order have been recommended, as described above. A map and amended First Schedule illustrating this proposed modification has been forwarded to the tree owners for their comments.

As a result of this more detailed assessment, the boatyard at 28 Old Ferry Drive and the greater part of the garden of 30 Old Ferry Drive have been excluded in the proposed modifications to the TPO.

With regard to the points made by Mr O'Keefe and Mr Corcoran in respect of the trees in the woodland W1, bramble is not classed as a tree, and so is not covered by the TPO. However, scrub is a key component in woodlands, adding to the woodland structure, providing graduated edges to woodland boundaries and glades, which in turn provide a better mix of habitat beneficial to wildlife. The southwestern half of the woodland in W1 has an area that gives the appearance of a glade. At the time of the Arboricultural Officer's site visit it was noted that there were some young trees growing up in this sector so it is more likely to establish as a wooded area. However, as glades are an important component of woodlands for the diversity they bring, the Council would not unreasonably withhold consent for some active management that enables the glade to remain as such.

The woodland, W1, has been protected using the 'woodland' designation because it is a woodland and because of its collective merit, rather than the individual merit of any single tree. Given that trees in woodlands compete against one another for space, this usually affects their form and size and as such, rarely would any single individual tree be highly rated. Mr O'Keefe mentions that the Horse chestnuts along the boundary are perhaps the only ones worthy of a TPO, but that some are in poor condition. Following an inspection by the Arboricultural Officer advice has been given to Mr O'Keefe concerning works that he may carry out to a number of these Horse chestnuts, by virtue of an exemption in the legislation.

Most of the properties subject to the TPO have river frontages and many of those trees situated within them can clearly be seen from the River Thames. There is a planning policy designation titled 'Setting of the Thames' which encompasses a number of these properties. There may be some limited views of W1 from the River Thames, but views of this woodland can be seen from the hillside behind Runnymede and would, to any onlooker there, be viewed as part of the setting of the Thames. However, views through the woodland can be seen from public vantage points, it is not just the trees along the woodland boundary that contribute to the character of the area. There is also much wildlife using the woodland and during the Officer's visit, it was noted that species of fungi, insects and birds were present. If an ecological assessment was undertaken during those times of year appropriate for the species, then it is likely that protected species may be identified. As it is so close to the River Thames, bat species may forage or even roost in the woodland especially during the summer months. However, the TPO has not been made to protect the woodland simply for any wildlife contribution, although wildlife can be taken into account.

Place Farm (popularly known as King John's Hunting Lodge) and now with the address of 22 Old Ferry Drive is probably an early 16th-century house. The original building (Hunting Lodge of King John) dated from 1275 and was replaced by Place Farm. It formed part of the Royal Hunting Grounds, access being provided by means of a ferry at OS 994 746. It was a common occurrence for servants, horses and dogs to be loaded onto ramps and brought across the river for the chase of both deer and wild boar (ref: "A short History of Wraysbury" by C Hughes).

The Saxon Palace was directly on the opposite side of the River Thames, approximately 250 metres from the boatyard. There is a Conservation Area which covers this site and includes a 360 metre stretch of river frontage. The site of the former Palace is situated on private land, though can be viewed from public vantage points. In general terms, the TPO more or less covers a reciprocal extent of land on the eastern side of the Thames. It is the proximity of the land, now subject to the TPO, which means it would have formed part of the setting of the Saxon Palace.

The removal of trees in the woodland, W1, would not technically be a material change to the area and therefore would not require planning consent on this basis. Likewise the Green Belt and Flood Plain designations would not confer any protection on the trees that could prevent their removal. Whilst there are some safeguards under the Forestry Act 1997, trees with a stem diameter less than 8cm could be removed (10cm or less in the case of thinnings) along with the removal of up to 5 cubic metres of timber in any one annual quarter without the need for a forestry felling licence. Over a period of time, the woodland could become eroded or even removed altogether. The only means to protect the woodland, including regeneration, is by a TPO.

It is only when the possibility of a threat to trees comes to light that we would assess to see whether those trees should be made subject to a TPO. It would follow on from this that the site was not considered under threat at the time when the Local Plan was developed.

Mr O'Keefe mentions that illegal activities have been carried out in the woodland, and that he has prevented considerable damage from being done. As the trees are now protected, should any unauthorised activities take place by third parties that result in damage to the trees, the Council would be interested to hear about it. Should there be sufficient evidence legal action could be taken against the offender(s), which may result in a conviction and fine. This may help deter further illegal activities from occurring in future.

The TPO is not to hinder the appropriate management of the woodland. The Council's Tree Section are willing to give basic advice in connection with the woodland or the tree owner may wish to appoint his own advisor. If it is proposed to fell trees, this would normally require a felling licence, and a felling

licence application must first be put to the Forestry Commission. Due to the public access through the site, Mr O'Keefe may be eligible for a woodland management grant from the Forestry Commission website. Anyone can apply to undertake works to a protected tree, there is no fee levied to submit an application for works to protected trees or a limit on applications made. The local planning authority would not unreasonably withhold consent for tree works which accord with good arboricultural practice but should consent be refused any applicant has the right of appeal against the decision. In respect of the boatyard at 28 Old Ferry Drive, consent for the pruning of branches overhanging from adjoining properties to facilitate access would not be unreasonably withheld.

The Council's consent is not required for cutting down or carrying out work on trees, which are dead or dying or have become dangerous. In the Secretary of State's view, this exemption allows the removal of dead wood from a tree or the removal of dangerous branches from an otherwise sound tree. Determining whether a tree is dead, dying or dangerous, for the purpose of a statutory exemption, is not always a straightforward matter. The Council's Tree Section can provide confirmation on site, should there be any uncertainty. Anyone proposing to cut down a tree under this exemption is advised to give the Council five days' notice before carrying out the work, except in an emergency. If work is carried out on a protected tree under this exemption, the burden of proof to show, on the balance of probabilities, that the tree was dead, dying or dangerous rests with the defendant.

With respect to the concerns raised regarding the reason behind the serving of the TPO, it has already been stated that the TPO was served as a result of development interest across some sections of the land and the potential for change within the area. The TPO is not used as a means to block development, but is purely a precautionary measure used to deter the indiscriminate removal of trees prior to the submission and determination of a planning application. Should full planning permission be granted, it will override the provisions of the TPO, where works are necessary to directly implement that permission. For example, this means trees could be removed which are in the footprint of an approved structure.

The Willow at King John's Close and a Copper Beech at 32 Old Ferry Drive have not been included in the TPO as they were not perceived to be under threat.

The Council would not endorse any inaccurate views made by supporters or objectors to the TPO, the views of The Kayles Action Group are their own. However, as already stated a number of letters have been received in support of the TPO, which have been summarised above and can be viewed in full in the TPO file.

4. Sustainable Development Implications:

In terms of the sustainable development policy the recommendation contained in the report will have the following significant beneficial sustainable development implications: A positive impact on the natural environment by retaining the tree stock.

RECOMMENDATION that Tree Preservation Order 44 of 2008 is confirmed with the following modification:

T1	Walnut (<i>Juglans regia</i>)	Located at 30 Old Ferry Drive.
G1	2 x Walnut (<i>Juglans regia</i>) 1 x Horse chestnut (<i>Aesculus hippocastanum</i>) 2 x Ash (<i>Fraxinus excelsior</i>) 2 x Sycamore (<i>Acer pseudoplatanus</i>)	Located along the eastern boundary of 30 Old Ferry Drive.
A1	Trees of the following species: Beech (<i>Fagus sylvatica</i>) Sycamore (<i>Acer pseudoplatanus</i>)	Located at 26 Old Ferry Drive.

Lime (*Tilia* sp.)
 Horse chestnut (*Aesculus*
hippocastanum)
 Ash (*Fraxinus excelsior*)
 Yew (*Taxus baccata*)
 Willow (*Salix* sp.)
 Hazel (*Corylus avellana*)
 Norway maple (*Acer platanoides*)

A2	All trees of whatever species	Parcel of land east of 22 Old Ferry Drive
W1	All trees of whatever species	Located on the south side of Old Ferry Drive and Friary Road
W2	All trees of whatever species	Located north west of the junction of Old Ferry Drive and King John's Close
W3	All trees of whatever species	Located on land to the north of 22 Old Ferry Drive
W4	All trees of whatever species	Located on land to the south and west of 22 and 24 Old Ferry Drive
W5	All trees of whatever species	Located on land to the north of 22 Old Ferry Drive
W6	All trees of whatever species	Located on land to the east of 22 and 24 Old Ferry Drive