

Tree Preservation Order 5 of 2009

On land on or at the rear of Rempstone, Egglestone, Onslow Lodge, Montrose, Conifers, Longwood, Willow Cottage, Treetops, Silver Birches, Acacia, The Wild Wood, Pinewood House and Old Orchard, north of the railway line, Heather Drive, Sunningdale, Berkshire.

1. Background:

Tree Preservation Order (TPO) 5 of 2009 was created in April 2009 on a belt of woodland at the rear of properties off Heather Drive, and north of the railway line in Sunningdale. It was initiated following concern that trees in the woodland were vulnerable to some clearance works and was made as a precautionary measure to deter inappropriate works from occurring.

The Order related to woodland on or at the rear of Rempstone, Egglestone, Onslow Lodge, Montrose, Conifers, Longwood, Willow Cottage, Treetops, Silver Birches, Acacia, The Wild Wood, Pinewood House and Old Orchard, north of the railway line, Heather Drive, Sunningdale, Berkshire. It is proposed to modify the Order on confirmation to exclude certain properties as per the specification below:

- W1 All trees of whatever species. Located on land on or at rear of Longwood, Willow Cottage, Treetops, Silver Birches, Acacia, The Wild Wood, Pinewood House and Old Orchard, north of the railway line, Heather Drive, Sunningdale.

2. Objections:

Letters of objection were received in respect of this TPO, from Mr S D Willingham of Wild Wood, from Mr M C E Mossman of Pinewood House and Mrs G Osseiran of Conifers, Heather Drive. Their objections are summarised below:

- There was recently an unsuccessful attempt by the RBWM to have this piece of land declared Green Belt. The serving of a blanket TPO is Green Belt by the back door. The Council wishes to impose their will on the owners of the land without justifying or explaining their interest.
- Some of the trees in the woodland are unstable and dangerous. Since the TPO prevents work to the trees, the TPO should be removed until the Council has carried out a risk assessment. Who is liable for injury or damage caused if one of the trees should fail?
- The TPO does not cover the main body of woodland at Pinewood House stopping short of the property boundary with Old Orchard and not extending to the railway line. This piece of land is not visible from public vantage points and the imposition of a blanket order is inappropriate; the order has been developed without a survey of properties. The protection of small trees and other scrub wood does not serve any great purpose.
- The only trees at the rear of Conifers protected by the order are Leylandii that have been regularly maintained by the owner at a height of 30 feet. Once a TPO is confirmed additional cost will be incurred, if the trees are not kept in check they will overshadow the garden and prevent the growth of fruit trees and shrubs.

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 the trees included within the TPO are of collective merit, running adjacent to the railway line and can be seen from Chobham Road and glimpsed from Heather Drive and Chobham Common. They provide a pleasant green corridor, giving this

area of Sunningdale a verdant appearance. The trees also serve as a buffer to the Special Protection Area (SPA) of Chobham Common and ensure a subtle rather than a stark contrast between the SPA and the residential area to the north. This tree belt also provides a valuable habitat for wildlife.

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. However, general development pressures alone are sufficient to justify the inclusion of trees in a TPO, which is the reason for the TPO in this case.

Following concern raised by a local councillor, an initial assessment of the woodland at the rear of Heather Drive from outside the site was made by one of the Council's Arboricultural Officers on 16th April 2009. At this time a bonfire was noted which may have been burning some of the tree material. Since the intention of the tree owners was not known, it was deemed expedient to make a TPO to protect the stretch of woodland running along the rear of Heather Drive adjacent to the railway line. As access to the site was difficult it was accepted that there could be small pockets of land where no trees existed and that the TPO might need to be modified. As a result of a further inspection of the woodland it is proposed to modify the TPO on confirmation to exclude the strip of land at the western end of the site, rear of Rempstone, Egglestone, Onslow Lodge, Montrose and Conifers. In light of this modification, Mrs Osseiran of Conifers has withdrawn her objection to the TPO.

Had this parcel of woodland been redesignated as Green Belt, this would not have conferred 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 the means of a TPO.

With respect to the concerns raised regarding the unsafe condition of some of the trees, the Council's consent is not required for cutting down or carrying out work on protected 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 Team 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.

The TPO is not intended to hinder good woodland management. This TPO has been created as a precautionary measure simply to deter inappropriate works or damage to the woodland. Applications for works in line with good arboricultural practice are unlikely to be refused but should consent be refused any applicant has the right of appeal against the decision. 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 liability for the trees remains with the tree owner, however, to assist the owners of protected trees, the Council provides free on-site arboricultural advice. With respect to the long-term management of the trees subject of the TPO, as with any tree, ultimately the responsibility for maintenance rests with the tree owner, who has a duty of care to ensure that their tree or trees are not in such a condition as to pose an unacceptable risk to other persons or their property. As such any tree whether subject to a TPO or not, should be inspected periodically by a qualified Arboriculturalist in the interest of health and safety.

The reason why the TPO does not include the main body of woodland at Pinewood House stopping short of the property boundary with Old Orchard and not extending to the railway line, is that the Royal Borough's jurisdiction only extends up to the borough boundary. The TPO does not extend further to the east as this area is within Surrey Heath Borough Council.

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 5 of 2009 is confirmed with the following modification:

- W1 All trees of whatever species. Located on land on or at rear of Longwood, Willow Cottage, Treetops, Silver Birches, Acacia, The Wild Wood, Pinewood House and Old Orchard, north of the railway line, Heather Drive, Sunningdale.