

Request for a Tree Preservation Order (TPO)

On land adjacent to Hythe End Road, Wraysbury, Berkshire

1. Background:

The request is for a TPO to cover both sides of Hythe End Road from the gates into the site of Charles Morris Ltd down to the southern end, at the bend in the road, where Thames Water has a pumping station. The decision for the making of TPO's is normally made by Officers' under delegated powers. However, due to the level of concern being expressed by a residents group, HEAT, the final decision as to whether to make a TPO is being put before Members.

2. Requestors:

Letters (including some email correspondence) requesting a TPO were received from Hythe End Action Team (HEAT), which represents residents in Hythe End Road, The Island, Sarsby Drive and Ferry Lane. Letters, based on a similar template, were received from Mr J Isaac of 30 Hythe End Road, Sigal and Yaron Ivry of 6 The Island, Mr D. Rogers of 12 Hythe End Road, Ms M Peyton and Mr P Southall of 52 Hythe End Road, Mr G Berry of 36 The Island, Mr D Gregory of 8 The Island and Ms M Bowdery. All of these letters and emails can be viewed in full in the file and are summarised below:

- There is a genuine risk that further destruction of the habitat for wildlife and the visual amenity that the trees along both sides of Hythe End Road will take place without there being an adequate and full TPO in place.
- The document 'Tree Preservation Orders: A Guide to the Law and Good practice' and the Environment Section of the Local Plan clearly identifies there is a compelling argument as to why a TPO should be immediately placed along Hythe End Road to protect what is left of the degraded environment of Hythe End. Pertinent extracts from the Borough's Local Plan being: 2.2.19, 2.2.20, 2.2.22, 2.2.27 and 2.2.29:-
 - 2.2.19 The area to the south of Hythe End has suffered landscape despoliation, largely as a result of mineral working, has not been restored or restored badly, land used unproductively and is poorly managed.
 - 2.2.20 Borough council will encourage and support positive measures to enhance the landscape.
 - 2.2.22 Importance of tree cover in contributing to the quality of the environment and nature conservation, seeking to preserve through use of development control and making TPO's.
 - 2.2.27 Loss of semi-natural habitat as a result of population growth and intensification of agriculture and forestry practice.
 - 2.2.29 Borough council is determined to protect and enhance the existing nature conservation resource.
- Request that in the TPO, the Borough Council requests that additional tree planting be provided to replace the trees and hedgerow already removed.
- The Local Plan states that English Nature (now Natural England) identified nine SSSI's in the Borough and Wraysbury and Hythe End Gravel Pits are one of these.
- The trees in Hythe End Road form the canopy and as such a 'group of trees' and therefore make a significant contribution to the public amenity, according to Policy N5.
- The government publication 'Tree Preservation Orders: A Guide to the Law and Good Practice' states under section 3.1 Power To Make a TPO the criteria of amenity. The benefit may be present or future; trees may be worthy of preservation for their intrinsic beauty or for their contribution to the landscape (the canopy over the road) or because they serve to screen an eyesore (Charles Morris Waste Management site) or future development; the value of trees may be enhanced by their scarcity; and the value of a group of trees or woodland may be collective only. Other factors, such as importance as a wildlife habitat (local deer as well as other wildlife), may be taken into account which alone would not be sufficient to warrant a TPO (taking all points referred to above collectively we believe there is sufficient grounds to warrant a TPO).
- It is the amenity that the trees to the west of Hythe End Road and the trees to the east that together from the archway leading to our homes and shield us from the devastation of the local environment to the side of the road and also provide a habitat for the wildlife in Hythe End Road.

- Hythe End Road is a quiet residential road and provides an attractive alternative route for walkers.
- Feel there is a real risk that the environment will be further destroyed with the removal of the trees. We have already seen systematic destruction on the land and discriminate removal of trees and hedges over the years and its impact on wildlife.

3. Responses to the request for a TPO and justification for the Order:

There is already a TPO covering trees to the east of Hythe End Road, no. 1 of 2007. As an up-dating exercise, this TPO was made to supersede an older TPO, no. 1 of 1958. The earlier TPO covered a limited number of trees, mainly Elm, which had since been decimated as a result of Dutch Elm disease during the last century. The current TPO is a 'woodland' designated TPO, which now covers all species and subsequent regeneration, so providing for the sustainability of tree cover on this part of the site.

The trees on the west side of Hythe End Road comprise of mainly Horse chestnuts and Sycamore of varying quality and sizes, though many are suppressed due to competition from each other. They form a thin linear belt, and are situated within a couple of metres from the road. They form a pleasant boundary feature to the field and are reciprocal to the trees on the east side of the road.

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.

It is acknowledged the trees collectively do provide some amenity, however, the word 'expedient' is important as a TPO should only be made if the trees are under some form of threat. A threat may materialize when, for example, it is known a tree owner is going to carry out detrimental works to trees, or if the land is up for sale and the intentions of future owners is not known. In this case, the Council is not aware, nor has it been evidenced by the requestors that the trees are likely to be felled by the current owners.

Recently, council officers have been discussing tree management with the owner, who on the basis of that advice carried out essential works to a number of trees on both sides of Hythe End Road. These works comprised of the removal of dead, dying elm trees, the removal of dead branches overhanging the road and the pruning back to give clearance to the road. This was carried out in furtherance of the owner's duty of care, to ensure road users were not put at risk. The tree owner did not exceed the recommended works, but could have, if it had been their intention to do so.

The Forestry Commission controls the felling of trees in England. In general terms, where trees are outside the curtilage of a garden, if anyone wishes to fell more than 5 cubic metres of timber in any annual quarter, provided that no more than 2 cubic metres are sold, a felling licence will be required. It is an offence, under the Forestry Act 1967 to fell trees without a licence, where one is required. If there is no licence or other valid permission, or if the wrong trees are felled, anyone involved can be prosecuted, fined and made to replant. The wholesale removal of trees along the western side of Hythe End Road would require a licence and therefore the trees are already protected to a degree. Prior to the grant of any licence the Forestry Commission would notify the Local Authority to seek their view on the matter. This would provide an opportunity for the Council to highlight concerns, should any significant tree loss be proposed. Even with a TPO in place, the Borough Council have no power to grant or refuse any application under a TPO which should first have been put to the Commission. Should felling commence in future, but lawfully under the exemptions of the Forestry Act, the Borough Council would still have the opportunity to review the position with regard to making a TPO.

There has been a conflict in the past between trees on the east side of Hythe End Road and the bund in Charles Morris Ltd site. Environmental Health requested the bund be increased in height to provide

improved noise attenuation for the benefit of local residents. The site owner obliged, but some of the material slipped down from the top of the bund and accumulated around the base of a number of trees, covered by the TPO. This was an unintended consequence of the works. However, Charles Morris Ltd removed as much of the material as practicable from around the trees, following our request.

There has also been some planning history. Last year an application was received, 08/01848, for an altered and improved access to sight lines off Hythe End Road. The proposal would have resulted in the loss of some of the boundary screening, the most noticeable of which would have been to the south of the existing access, either side of the road. Most of this vegetation (trees and shrubs) was poor quality and no objection was made on tree grounds subject to satisfactory mitigation in terms of replacement planting. There was an opportunity for the owner to have removed some of this vegetation on the west side of Hythe End Lane before they submitted this application or during its consideration by the Borough Council, but they did not do so. This application was subsequently withdrawn.

The Environment Agency has produced a public consultation on the Lower Thames Strategy, which includes the provision of a flood relief channel for Wraysbury. A number of trees that residents are requesting to be included in a TPO would have to be removed should the flood relief channel be implemented, not only those directly in the footprint of the channel, but those which could be made unstable by the excavation works. Before any planning permission is granted, the means of mitigating the impact of tree loss would have to be taken into account, as it was for the Jubilee Channel. However, from the experience of previous planning applications, the Environment Agency is an organisation committed to ensuring that suitable levels of mitigation are provided and occasionally exceed what is expected of them, creating much improved areas ecologically, which tend to be wider in influence than the constructed form. This could have significant benefit to wildlife and to the appearance of the area, provided suitably large enough areas are designated for this purpose.

Any full planning permission granted for the Wraysbury relief channel, would override the provisions of a TPO, so the use of a TPO to protect the trees along the west side of Hythe End Road would not prevent their possible future loss. The same goes for the trees already covered by a TPO to the east of Hythe End Road. Whilst there is a possible loss of some of the trees due to the Wraysbury relief channel, it would not be sufficient to TPO them in this case, as the Environment Agency is extremely unlikely to remove them without the requisite planning permission for the scheme being in place. It is recognised the relief channel is not guaranteed and that potential construction would not start for a number of years. However, there would appear to be no financial gain to the current tree owner to remove trees on land which may become part of this scheme in future. In contrast, the removal of these trees, which would require a specialist contractor, would actually cost the tree owner money.

In the making of any TPO, there is no provision for the Borough Council to request a landowner to carry out additional planting.

The legislation does state that it must be expedient to make a TPO, and Officers' opinion is that the particular trees are not under a sufficient threat from the current owner to warrant their inclusion in a TPO at the present time.

4. Sustainable Development Implications:

In terms of the sustainable development policy the recommendation contained in the report will not impact upon it.

RECOMMENDATION that a Tree Preservation Order is not made in this instance.