

<u>Location:</u>	Land to the West of Lucas Lane and East of Headlands, Grays Lane, Hitchin, Herts, SG5 2HR
<u>Ref. No:</u>	TPO 199 (2020)
<u>Officer:</u>	Tom Rea

Date of expiry provisional TPO: 10.09.2020

Extension of statutory period: N/A

Reason for referral to Committee: The provisional TPO has been objected to by the applicant, and in line with paragraph 8.4.5 (l) of the Constitution, the considerations as to whether or not to confirm, amend or not confirm the TPO must be made by committee.

1.0 **Relevant History**

- 1.1 TPO 199 (2020) was served on 10th September 2020. It is an 'Area' TPO and it involves the temporary protection of trees and vegetation on a former orchard comprising 0.1371 hectares of land located in the north west corner of a field off Lucas Lane, Hitchin. An objection on behalf of the landowner was received 14/10/2020.
- 1.2 TPO 199 (2020) is provisional on it being confirmed, not confirmed or amended by the Local Planning Authority within 6 months of its being served.
- 1.3 A copy of the provisional TPO 199 (2020), including TPO plan, is attached at **Appendix A** to this report

2.0 **Policies**

- 2.1 None relevant

3.0 **Representations**

- 3.1 An objection has been received to the provisional TPO from the agent acting on behalf of the landowner. The main points of objection are as follows:
 - Question the procedural validity and legitimacy of the TPO having regard to Government guidance.
 - No assessment was made prior to TPO being served
 - The trees within Area A1 provide very little visual amenity
 - None of the trees are of high quality
 - The area has low potential for protected species to be present on site
 - Not made in the interests of amenity in accordance with the Town and Country Planning Act

The landowners objection is supported by a visual and landscape assessment and a scrub assessment survey.

4.0 **Planning Considerations**

4.1 **Site and Surroundings**

4.1.1 The site the subject of the provisional TPO relates to land at the north western corner of a field to the west of Lucas Lane, south of Lavender Fields care home and north of a public bridleway (PRoW 004). A detached property known as 'Headlands' is located immediately to the west / south west . To the east of the site and beyond an open field are residential properties which front the eastern side of Lucas Lane. All of the land west of Lucas Lane in this area is located within the Green Belt. In the Emerging Local Plan (2011 – 2031) the proposal is to allocate two housing sites (HT5 and HT6) to the west of Lucas Lane and Crow Furlong as well as incorporating other land into the urban area removing its green belt designation. This release of land from the Green Belt would include the TPO 199 site itself as well as 'Headlands' and the Lavender Fields care home.

4.1.2 The area covered by the provisional TPO comprises approximately 0.1371 hectares (1,176 sqm) and is rectangular in shape being bounded to the east and south by a small grassed field.

4.2 **Key Issues**

4.2.1 **General procedural matters**

4.2.2 Local planning authorities can make a Tree Preservation Order if it appears to them to be *'expedient in the interests of amenity to make provision for the preservation of trees or woodlands in their area'* (Paragraph 3.1.'TPO's : A Guide to the Law and Good Practice'). There is no statutory definition of 'Amenity' therefore authorities need to exercise judgment when deciding whether it is within their powers to make an Order. It may be expedient to make an Order if the authority believes there is a risk of trees being felled, pruned or damaged in ways which would have a significant impact on the amenity of the area.

4.2.3 Paragraph 3.17 of the above mentioned guidance makes it clear that there are drawbacks to the making of Area TPO's for example trees may be included that do not warrant protection. However paragraph 3.18 states that *'the area classification should only be used in emergencies and then as a temporary measure until the trees in the area can be assessed properly and reclassified'* This is relevant to this case where the area of trees in question was under immediate threat of removal as notice had been given by the landowner of the intention to commence clearance of the area.

- 4.2.4 Paragraph 3.7 of the guidance also advises that a Local Planning Authority ‘ *may consider that the risk of felling justifies the making of a TPO before they have been able to assess fully the amenity value of the tree. This should not, however, prevent them from making a preliminary judgment on whether a TPO would appear to be justified on amenity grounds, nor from making a more considered assessment before the TPO is confirmed.* In this case a preliminary judgement was made that the trees concerned had the potential to significantly contribute towards local amenity hence the decision to proceed with the serving of a precautionary Area TPO.
- 4.2.5 The guidance advises what Local Planning Authorities may take into account when considering amenity value. One of these guides is visibility, in that the extent to which the tree can be seen by the public can inform the assessment of amenity. Further considerations may be size and form; future potential as an amenity; rarity, cultural or historic value; contribution to the landscape; and contribution to the character and appearance of the conservation area.
- 4.2.6 Where objections have been made to a provisional TPO, such as in this case, the LPA has to consider the objections prior to confirming or otherwise the TPO. Such considerations are set out below.
- 4.2.7 Following the serving of the provisional TPO and in accordance with paragraph 3.7 of the guidance the LPA commissioned an independent arboricultural assessment of the TPO. This report has been used to assist the LPA in deciding whether to confirm or otherwise, the TPO. The document (by Sharon Hosegood Associates), is attached at **Appendix B** to this report
- 4.2.8 **Consideration of amenity and other matters**
- 4.2.9 The general setting and condition of the trees and vegetation
- 4.2.10 The covered by the provisional order is private land set back from Lucas lane and the right of way to the south (PRoW 004). The site contains a mix tree species and scrub including mature hawthorn, sycamore, walnut, willow and fruit trees. The site is a former orchard and is overgrown with ivy and other vegetation.
- 4.2.11 The SHA arboricultural report describes the location, size and character of the site as well as a general description of the TPO area and concludes on tree condition and suitability for inclusion in a Tree Preservation Order. Essentially the report advises that the although the area appears densely vegetated when viewed from public viewpoints with trees up to 12m in height the detailed inspection reveals that the area has been neglected and poorly managed and consequently the quality of vegetation and trees is generally low. The report advises that only three trees are worthy for protection within a TPO. These trees have been scored using the industry standard ‘Tree Evaluation Method for Preservation Orders (TEMPO).

4.2.12 The TEMPO used by SHA for the area TPO 199 (2020) includes an 'amenity assessment' that scores the general condition of trees, their retention span in years, their relative public visibility and other factors such as specific arboricultural values, rarity and habitat importance. Three trees were identified as scoring sufficiently high to merit inclusion in an amended TPO.

4.2.13 Visibility

The field immediately to the south and east of the area of trees / scrub is private land however the area can be seen in views from Lucas Lane and from gaps along the public bridleway PRow 004. Views from the west are obstructed by Headlands and its garden and from the north by the Lavender Fields development. Overall, views from public rights of way are somewhat limited by existing vegetation. Should the adjoining field (site HT5) be developed for housing it is likely, as the HT5 site wraps around the southern and eastern boundary of the site that the trees / scrub would become less visible from public views although there would be some benefit to occupiers of the new dwellings in the western part of the new development given the close proximity to the area.

4.2.14 Ecology

An ecological assessment of the site was carried out by MKA Ecology in January 2020 and concluded that :

'The scrub represents a mature habitat of some biodiversity value. Whilst there is some very low potential for protected species to be present the removal of the scrub will not cause harm to these species groups provided the recommendations within the report are adhered to.'

The report makes several recommendations in respect of newt/reptile hibernation, a watching brief during scrub clearance works and works to be carried out outside of the breeding bird season (unless checked by an ecologist prior to works). All of the above represent best practice. The Council's ecological consultants advise that the intrinsic habitat interest of the site is likely to be low and that best practice procedures should be followed via an ecological appraisal (which has been undertaken by the owners via the MKA report). In short, the ecological value of the site has been assessed as not a priority habitat and not a constraint on tree / scrub removal subject to appropriate best practice being followed and any licences being obtained.

4.2.15 Conservation / cultural considerations

The site not within a conservation area and there are no nearby listed buildings the setting of which may be affected. The area does not contain any trees which are of rare value and the site has no historic value. The SHA report advises that because of the nature of the trees / scrub and its setting the site cannot be considered a woodland.

4.2.16 Expediency

At the time the provisional TPO was served there was a clear risk of the area being cleared which may have not been in the public interest. The LPA has now reviewed the TPO having had regard to the applicants representations and its own arboricultural and ecological advisors advice and it is concluded that the Order should be amended as per the recommendation below.

4.2.17 Objections to the provisional TPO by the landowners agents

The main grounds of objection are as follows:

- The trees are only of moderate quality
- Visual amenity is restricted by topography and other vegetation, surrounding buildings and the location of the trees on private land
- Future development of the adjoining land undermines any future visual amenity
- The Order contains an error
- The area type Order is contrary to Government guidance

4.2.18 Officers agree that the area trees / scrub are of limited quality save the three trees identified. Visual amenity is also restricted. Future development will limit public amenity but still offer some amenity to occupiers of the development. Any error on the Order is minor and does not prevent clarity of the Order. The Order is not contrary to Government advice and good practice.

4.2.19 Officers agree with the landowners that, should the Order be varied, it is limited to comprising individual trees and/or defined groups.

4.4 **Conclusion**

4.4.1 Following a more detailed assessment of the trees and general vegetation area covered by TPO 199 (2020) and having regard to the landowners representations, it has been concluded that there is no justification in visual amenity terms for the Area TPO to be confirmed. Furthermore, there are no historic, cultural or ecological grounds for the whole of the TPO area to be retained. However, three specific trees within the area have been identified as having the potential to contribute towards the visual amenity of the area especially if new housing is developed nearby. Therefore, it is recommended that the Order is amended to an individual order to protect three trees (T1 (Walnut and T2 & T3 Sycamore) as illustrated on the proposed amended Order attached at **Appendix C** to this report (Tree Preservation Order Plan SHA 1300 TP) .

5.0 **Legal Implications**

5.1 In making decisions on applications submitted under the Town and Country Planning legislation, the Council is required to have regard to the provisions of the development plan and to any other material considerations. The decision must be in accordance with the plan unless the material considerations indicate otherwise. Where the decision is to refuse or restrictive conditions are attached, the applicant has a right of appeal against the decision.

6.0 **Recommendation**

6.1 That the provisional Tree Preservation Order TPO 199 (2020) is modified to a Tree Preservation Order covering three specific trees as identified on Plan No. SHA 1300 TP

Appendices:

Appendix A: TPO 199 (2020) Plan (Provisional)

Appendix B: Sharon Hosegood Associates TPO assessment report

Appendix C: Proposed Amended TPO 199 (2020) Plan (Confirmed)