



## PLANNING COMMITTEE - 14TH JANUARY 2015

**SUBJECT: TREE PRESERVATION ORDER 75 OF 2014 - LAND AT WERN WOODLAND, NELSON**

**REPORT BY: CHIEF EXECUTIVE**

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### 1. PURPOSE OF REPORT

- 1.1 A Tree Preservation Order (TPO) was imposed on a woodland to the east of Tawelfan in Nelson on 7 July 2014 in response to the cutting down of trees on a neighbouring area of land to the northwest. A plan is attached showing the location of the TPO, which is described in the order as consisting of a mixture of species including oak, alder, willow, goat willow, birch and hawthorn. TPOs are made on a provisional basis to allow landowners and others to comment before they are confirmed by the Local Planning Authority. Twenty-eight days are usually given for comment - in this case that period expired on 6 August 2014 - but objections were received in December on behalf from the landowners via the local ward member with a request that the confirmation of the TPO is considered by Planning Committee.

### 2. SUMMARY

- 2.1 To consider whether it would be appropriate to confirm this TPO

### 3. LINKS TO STRATEGY

- 3.1 This matter has been considered on the basis of the adopted Caerphilly County Borough Local Development Plan up to 2021.

### 4. THE REPORT

- 4.1 This committee is taking place approximately a week after the six-month period, and as a further TPO has been served to extend the period and allow Members to consider the matter.
- 4.2 The objections with regard to the TPO are as follows.

A. The owners have lived adjacent to the woodland for over 10 years. In that time they have only enhanced the area, planting hedges and trees where appropriate.

B. There appears to be an allegation that they have removed a number of trees without obtaining Natural Resources Wales (NRW) permission. An area of trees that had become dangerous to people and horses was cleared and returned to beneficial use as grazing, which it previously was. Following the attendance of CCBC arboriculturist, there was concern that they may have exceeded the quarterly allowance (which they had not used in the previous 10 years). This resulted in the attendance of an officer from NRW. He catalogued the cut trees and took no action stating that had they applied for a permit to undertake the work, it would

have been granted. The only area of concern was that they had used more than one quarter's allowance in one go.

C. The area identified for the TPO was historically grazing land, as can be seen from Google Earth images in 1945. Over the years, the ground has become increasingly boggy and allowed the unintended growth of trees and bushes. The area is of no special interest with many trees dying or dead due to the ground conditions. There is little public amenity value.

D. With regard to public amenity, very little of the area can be seen from the adjacent cycle track due to the growth of trees and bushes. In the period of foliage, it would take a concerted effort to see this area from the cycle track. They contest the view that the area has trees included in it that have significant public amenity value and make a notable contribution to the local and wider landscape.

E. The TPO identifies the area as 'Land at Wern Woodland'. They believe this is a deliberate attempt to link their land with Wern Woodland to give some credibility to the order. Wern Woodland is actually some 1km away, as identified on CCBC's own website.

F. The area of woodland falls under the remit of NRW. The officer from NRW advised that they would require his permission to undertake any felling in this area. Any TPO would create a duality of legislation already in force.

G. The area is very boggy and makes maintenance very difficult. They have no plans to return the area to pasture, which was its historic use. However, they may need to remove dead/dying trees and open up some space to allow their horses to roam safely. They would seek permission from NRW prior to any work. In any event, even if it were practical to return the area to pasture, this was what the area was some 60 years ago.

The landowners conclude: "In essence, we have managed our land responsibly. The improvements we have made to our land in general have benefitted us as owners and the public who visit our area. The area identified for TPO is already protected by NRW. We see no grounds for issuing a TPO covering an area that was previously pastureland and on which there are no trees that are either endangered or which have any special scientific interest. The area is not clearly visible to the passing public. The order would unjustly affect our right as landowners to use it in the most beneficial way for our particular agricultural needs."

Allegations are also made against the conduct of one of the Council's officers who was involved with the making of this TPO, but they have not been repeated here as they have no bearing on whether the woodland is worthy or not of a TPO.

4.3 Those objections will be considered below on the basis of the same lettering.

Objections A and B: The landowners' commitment to enhancing the area is not questioned, and the involvement of the NRW has no bearing on the merits of the TPO.

Objection C. The historic use of land does not have any bearing on the validity or expediency of a TPO. The legislation guidance, 'Tree Preservation Orders – A Guide to the Law and Good Practice' (AGTLGP), does not mention it at all as a factor that could preclude a tree, group of trees, or woodland from inclusion in a TPO. The Council's aerial photography data from 1940 shows the area covered by the proposed TPO as having small trees visible, especially towards the south-eastern corner. The south-eastern quadrant looks to be at least as wooded as the woodland slightly further east and south of the adjacent railway line. Ordnance Survey (OS) mapping of 1959 shows the same area as being a boggy/marsh. By 1961 OS mapping shows the area as a mixed wooded pasture. 1971 OS mapping shows the area as clearly wooded, which subsequent aerial photography from 1991 and 2010 appears to confirm.

The Council must consider the merit of what is there at present. There are many trees and woodlands that are relatively modern in origin, but that does not mean they are not worthy of a TPO.

Objection D. The TPO does have a significant amenity value. The definition of 'amenity' in this context is not completely clear-cut. AGTLGP does state: *"TPOs should be used to protect selected trees and woodlands if their removal would have a significant impact on the local environment and its enjoyment by the public... The trees, or at least part of them, should therefore normally be visible from a public place, such as a road or footpath... the value of a group of trees or woodland may be collective only."*

The wooded area in question is highly visible from all four of its sides:

- from the well-frequented cycle track NCR 47 adjacent to the southwestern side (parallel to the railway), which is also parallel to PROW Gelligaer FP168.
- from PROW Gelligaer FP168 which also continues along the wood's eastern boundary, crossing two stiles.
- from PROW Gelligaer FP167 which is at the west end of the wooded area, and then crosses the railway via the swing gates.
- from PROW Caerphilly FP12 which leads to the railway crossing from the southwest (Nelson) side.

It can also be seen from several houses at Tawelfan.

The Guide continues: *"[LPAs] are advised to develop ways of assessing the 'amenity value' of trees in a structured and consistent way, taking into account the following key criteria: visibility, individual impact, wider impact and expediency."* Mindful of this, CCBC officers use the Tree Evaluation Method for Preservation Orders (TEMPO) process. This is a widely used methodology in the UK for assessing the key criteria highlighted by the guidance as necessary for fair evaluation, and is also a structured and consistent method of appraisal that is used on every tree or group of trees (or woodland) prior to serving a TPO. TEMPO assesses:

- Condition (though it should be noted that the TEMPO assessment is NOT a full hazard assessment of a tree or group of trees – which remains an owner's responsibility),
- Retention Span (in years),
- Relative Public Visibility
- Other Factors such as historic or habitat importance, or species rarity, and finally an
- Expediency Assessment which is essentially concerned with the level of threat to the tree or trees' removal.

The TEMPO assessment for this particular woodland – conducted on 3 June 2014 – resulted in a score of 18 points, which equates to a decision of 'Definitely merits TPO'.

The site is also identified as part of a site of importance for nature conservation (SINC) in the Adopted Caerphilly County Borough Local Development Plan. The eastern side of the woodland adjoins a Site of Special Scientific Interest (SSSI).

Objection E. The title of the TPO is not particularly critical, and it can be changed if it is considered inaccurate or inappropriate. The name was based on the SINC, which is referred to in the LDP as Wern Woodland, and runs for some 900m along the northern side of Nelson, the particular aspects of which are

Primary Features

- Semi-natural wet woodland.

## Secondary Features

- Semi-improved neutral grassland.
- Scrub.
- Standing water.

The woodland subject of the TPO is the northwestern extremity of the SINC, but also adjoins an SSSI.

Objection F. NRW's permission is only required if a Felling Licence is being applied for. A Felling Licence is not required if fewer than 5 cubic metres of timber is being felled in any given calendar quarter. Smaller quantities of felling, or pruning maintenance to trees covered by a TPO would still require the Council's written approval. Similar exemptions apply with both forms of protection, e.g. dead or dangerous trees are exempt from prior written permission from the LPA or the granting of a Felling Licence. Anyone undertaking such works would though need to be able to prove – if queried – that the trees concerned were in fact dead or dangerous. However, non-emergency pruning or removals would need Local Planning Authority written approval. Provided the works applied for were reasonable and appropriate then they would be approved. Normal sensible management of woodlands (e.g. regular selective thinning, or routine maintenance of boundary trees) would nearly always be approved unless there were a specific issue relating to loss of overall amenity.

Objection G. If the woodland were not covered by a TPO then there would not be any requirement to seek permission from any organisation to fell trees unless it were more than 5 cubic metres of timber being felled within any one calendar quarter. If the extent of the space to be "opened up" referred to in objection G to allow horses to roam safely were not detrimental to the overall amenity of the woodland then the applied for works would likely be approved. If an application were received to remove a significant swathe of woodland, then that would likely be refused, or possibly approved with some modification.

The woodland is of sufficient amenity value to justify its protection by a TPO. It would appear that the current owners wish to manage it, rather than remove it, but their intentions might change, and future owners of the land may also have other intentions. It would therefore be prudent to confirm the TPO.

## **5. EQUALITIES IMPLICATIONS**

5.1 There are no equalities implications in this case.

## **6. FINANCIAL IMPLICATIONS**

6.1 None

## **7. PERSONNEL IMPLICATIONS**

7.1 None.

## **8. CONSULTATIONS**

The Council's tree officer.

## **9. RECOMMENDATIONS**

9.1 That TPO 75 of 2014 is confirmed with the following change of name: Woodland northeast of Tawelfan adjoining National Cycle Route 47

## **10. REASONS FOR THE RECOMMENDATIONS**

10.1 As set out in the report above

## **11. STATUTORY POWER**

11.1 The Town and Country Planning Act 1990 and related acts and statutes.

Author: Tim Stephens - Development Control Manager

Consultees: Paul Harris - Senior Arboricultural Officer

Background Papers: Provisional TPO 75 of 2014