



Northumberland County Council

Castle Morpeth Local Area Committee 15th May 2023

The Northumberland County Council (Land at Hebron Hill Farm
Hebron, Morpeth, Northumberland) Tree Preservation Order 2023
(No 01 of 2023)



1.0 Introduction

1.1 The purpose of this report is to seek a decision from the Local Area Council as to whether or not they wish the County Council to confirm the provisional Northumberland County Council (Land at Hebron Hill Farm Hebron, Morpeth, Northumberland) Tree Preservation Order 2023 (No 01 of 2023).

1.2 This provisional Tree Preservation Order (TPO) is **recommended to be confirmed** at Committee. Members will note that 1 no objection has been received in respect of the 2023 TPO which is appended to this report. The 2023 TPO follows a previous TPO from 2022 which was 'not confirmed' under delegated powers. An objection to the 2022 TPO was received from Hebron Hill Management Company and contained 14 signatures. That objection has been carried forward for consideration to the 2023 TPO in addition to any new objections. The 2022 TPO objection is therefore appended and Members are asked to consider this.

1.3 It should be noted that the consultation period to submit representations for the 2023 TPO was extended by a further 21 days at the request of one of the residents of Hebron Hill.

Background to 2022 TPO

1.4 Notification was received by the Planning Department that works to remove a number of trees within the Woodland surrounding Hebron Hill were to be undertaken imminently. Concerns were raised as to the impact this would have on the woodland and on what appeared to be healthy mature trees. The request was to have the trees assessed to consider if they were worthy of protection to enable any works to be carried out in the future to be controlled through the planning application process.

1.5 In response to this, the Planning Department instructed an independent Arboricultural Consultant to carry out an assessment of the woodland and garden areas of the residential properties to obtain an expert opinion on the merit of the trees. The Consultant's findings were that the trees did merit protection and a provisional TPO was compiled and served on Hebron Hill Management Company on 12th July 2022. The 2022 TPO protected 3 groups of trees. The area of woodland to the west of Hebron Hill recorded as W1, the area of woodland to the north of Hebron Hill including the trees within the rear gardens of Woodlands, Oaklands, The Sycamore and The Firs recorded as W2, and 1 group of trees adjacent to The Farm House recorded as G1.

1.6 At the time of the Consultant's assessment, the exact details of species and numbers of trees within the residential garden areas had not been fully established, therefore, they were listed as G2 but were incorporated into the W2 woodland until the numbers and species had been verified at a later date. At that point, the TPO would be amended to separate G2 from the woodland to be identified as its own group.

1.7 An objection to the 2022 TPO was received from Hebron Hill Management Company (appended). Having taken this into consideration, and based on some of the points raised, it was considered that an appropriate way forward to address these was to recommend that the 2022 TPO should not be confirmed and instead replaced by a new (2023) TPO. Under the 2023 TPO, the protection of the woodland to the west of the dwellings remains the same. The woodland to the north has been reduced in size in order to separate the woodland from the trees within the rear gardens of the aforementioned 4 properties. Four new groups have been created to incorporate these meaning each residential property independently holds its own group of protected trees. In doing this, it will enable the residents to address

any issues of felling, pruning etc of the trees their own gardens without impacting the other groups of trees listed within the 2023 TPO.

1.8 Authorisation was sought from the Chairman of the Castle Morpeth Local Area Committee and the Director of Planning to allow officers not to confirm the 2022 TPO under delegated powers and simultaneously compile the 2023 TPO. The Chairman and Director granted authorisation subject to the 2023 TPO being put before Members of the Castle Morpeth Committee for consideration.

Site History

11/01543/FUL - Conversion of redundant farm buildings to form 4no dwellings including new garaging; Demolition of existing bungalow and construction of replacement dwelling and new garage; Construction of new access road and vehicular access; And new treatment plant. (Re-validation of and amended plans relating to CM/20110170) - Approved

16/03717/FUL - Erection of one general purpose agricultural building and the erection of one livestock building – Approved

18/00646/FUL - Erection of a rural workers dwelling – Approved

22/02495/FDN - Felling, removal, reduction and remedial works to mixture of trees - Beech, Elm, Sycamore, Birch and Scots Pine - due to proximity to buildings, disease, structural collapse, structural integrity and them being dead or storm damaged – No objection

22/02662/FDN - Felling, removal, reduction and remedial works to mixture of trees - Beech, Elm, Sycamore, Birch and Scots Pine - due to proximity to buildings, disease, structural collapse, structural integrity and them being dead or storm damaged – No objection

22/04251/FDN - Mixture of Beech, Sycamore, Birch and Scots Pine trees have structural faults and are in close proximity to buildings and residents – Refused, trees did not warrant immediate felling. Applicant was advised to submit request through a planning application to fell the protected trees

22/04329/FELTPO - Tree Preservation Order Application: G3 Birch - Fell, W3 Sycamores - Crown Balance, T13 Sycamore - Pollard, T14 Sycamore - Coppice, T21, T23, T25 ScotsPine - Fell, T24 Birch - Fell and T27 Beech – Fell – Part consent, part refusal. Some trees were not considered to be at immediate risk of falling

23/01224/FDN - 5 Day Notice to request to fell Birch Tree. Arboricultural Report states Structurally severely compromised with two clearly visible cracks to base of stem, significant decay from 9-25cm. Due to size and location of tree it is considered to pose a significant hazard - Granted

2.0 Appraisal

2.1 The land to which the 2023 TPO applies is the woodland areas located to the north and west of the dwellings at Hebron Hill. The 2023 TPO also protects trees within the rear gardens of four of the dwellings – Woodside, Oaklands, The Sycamore and The Firs, and a group of trees located to the west of The Farm House. This follows the earlier findings of the Arboricultural Consultant (on behalf of NCC) who undertook a full assessment of the area. The Council's Tree and Woodlands Officer made a subsequent visit to the site to verify the numbers and species of trees within the rear gardens of the 4 residential properties for accuracy.

2.2 It was considered by both the Arboricultural Consultant along with the views of Planning Officers who visited the site that the trees merited protection by a Tree Preservation Order. Local planning authorities can make a Tree Preservation Order if it appears to them to be expedient in the interests of amenity to make the provision for the preservation of trees or woodlands in their area.

2.3 The residents of Hebron Hill were informed of the making of the provisional 2023 TPO on 10th January 2023. Following the receipt of the objection to this and the 2022 TPO objection, the 2023 TPO must now be determined by the Local Area Committee.

2.4 Members will note that the objections (attached) raise a significant number of points which are very generally summarised below:

- The local planning authority do not have the power to make the tree preservation order, as there is no demonstrable expedience
- Validity of TPO as unsuitable in law on amenity grounds
- HHMC, as management company, exhibits exceptional arboricultural management and a TPO is unnecessary and superfluous ruling
- TPO is discriminatory and prejudicial
- Expedience is not documented in the reasons for making the order therefore the grounds of amenity are not sufficient to make an order
- HHMC object to the trees being cited as a predominant feature
- HHMC disagrees that the visibility of the trees is a contributing factor of the amenity value
- The authority has not exercised judgement or shown such judgement in their decisions
- Significant negative impact or the degree of enjoyment by the public is not documented in reasons for making the order. The modification of these documents to include such phrasing would be deemed as a substantial change to the TPO and prevent confirmation of the order

- NCC have not proven or detailed significant negative impact to the local environment
- The authority has failed to show” that protection would bring a reasonable degree of public benefit in the present or future
- The vast majority of Hebron Hill trees cannot be seen by the public, due to the density of the perimeter trees obstructing the view to the middle and inner trees
- Accessibility of trees is not documented in reasons for making the order
- Size and form are not documented as rational in reasons for making the order
- Future potential as an amenity is not documented as rational in reasons for making the order
- The majority of the Hebron Hill trees are approx. 80 years old. The amenity value of these trees is therefore currently at a maximum and future amenity value will only be diminishing
- Rarity, cultural or historic value is not documented as rational in reasons for making the order
- Hebron Hill has no cultural or historical value. If either of these were a factor, they would have been raised and considered during the recent development phase of Hebron Hill
- Importance to nature conservation is not documented in the reasons for making the order
- Response to climate change is not documented in the reasons for making the order
- Authority tree strategy or existing registers of merit are not documented in the reasons for making the order
- It can be proven that Hebron Hill trees are under consistent, good arboricultural management
- All maintenance works to Hebron Hill trees have been based on expert recommendation and conducted by qualified technician. HHMC believes the TPO is actually impacting the safety to residents, buildings and local environment.
- The drawn up and served order does not provide sufficient detail of Hebron Hill Trees
- The Tree Preservation Order is inaccurate

- Unlawful access obtained by NCC officers
- The TPO will cause significant risk and disruption to HHMC residents

2.5 During the assessment of the site carried out by the Planning Officers and the Arborist employed by NCC, the protected groups of trees as a whole were considered to make a strong contribution to the visual amenity of the immediate and wider landscape. Hebron Hill Farm sits prominently within the landscape and the trees make a strong contribution to the setting of the converted farm steading both for the benefit of the amenity of residents at Hebron Hill Farm and extended views from the village of Hebron and the Church of St Cuthbert. The risk of their removal would have a significant negative impact on the local environment and the wider enjoyment by the public travelling along the local road network to Hebron Village from the A1.

2.6 Officers consider that it is expedient to make an Order given that the requestor of the Tree Preservation Order and a member of the public who has asked for their identity to remain anonymous had reason to believe that there was a risk of trees being felled, pruned or damaged in ways which would have a significant impact on the amenity of the area.

2.7 Members of the Committee are requested to make a decision about the 2023 TPO as a result of the objections mentioned earlier within 6 months of the date of the provisional Order i.e. 10th July 2023. There are 3 outcomes to the 2023 TPO that Members can make, which are listed below:

- To confirm the 2023 TPO without modification
- To confirm the 2023 TPO with modifications
- Not to confirm the 2023 TPO

3.0 Conclusion

3.1 The view of the Council's Arboricultural Consultant and Planning Officers is that it is expedient for the reasons above that the trees in question merit protection with a Tree Preservation Order following an assessment on the trees and their visual amenity. The trees are in good condition, of good visual amenity and make a positive contribution to their surroundings, not only within Hebron Hill, but from further afield. The imposition of the 2023 TPO would not prevent works from taking place, but it would allow the council to monitor works and secure replanting if necessary following any submitted applications for works or felling. It is therefore considered that the 2023 TPO should be confirmed for the reasons given above.

Other Matters

EIR/FOI

Members should note that EIR requests have been received in relation to the Hebron Hill TPO. These have requested information and questioned the practice of NCC in the 2022 and 2023 TPO process. These have all been responded to, however, the requestor challenged the response and referred matters to the Information Governance Specialist (IGS). The IGS found that the EIR request was handled

correctly and that exceptions were thoroughly considered. It concluded that the Council has complied with the obligations under the Environmental Protection Regulations.

A stage 1 and stage 2 complaint has also been submitted, both of which have been responded to with an outcome of no fault found by the Council. The requestor has referred the case to the Social Ombudsman and the outcome is awaited.

Equality Duty:

The County Council has a duty to have regard to the impact of any proposal on those people with characteristics protected by the Equality Act. Officers have had due regard to Sec 149(1) (a) and (b) of the Equality Act 2010 and considered the information provided by the applicant, together with the responses from consultees and other parties, and determined that the proposal would have no material impact on individuals or identifiable groups with protected characteristics. Accordingly, no changes to the proposal were required to make it acceptable in this regard.

Crime and Disorder Act Implications:

This proposal has no implications in relation to crime and disorder.

Human Rights Act Implications:

The Human Rights Act requires the County Council to take into account the rights of the public under the European Convention on Human Rights and prevents the Council from acting in a manner which is incompatible with those rights. Article 8 of the Convention provides that there shall be respect for an individual's private life and home save for that interference which is in accordance with the law and necessary in a democratic society in the interests of (inter alia) public safety and the economic wellbeing of the country. Article 1 of protocol 1 provides that an individual's peaceful enjoyment of their property shall not be interfered with save as is necessary in the public interest.

For an interference with these rights to be justifiable the interference (and the means employed) needs to be proportionate to the aims sought to be realised. The main body of this report identifies the extent to which there is any identifiable interference with these rights. The Planning Considerations identified are also relevant in deciding whether any interference is proportionate. Case law has been decided which indicates that certain development does interfere with an individual's rights under Human Rights legislation. This application has been considered in the light of statute and case law and the interference is not considered to be disproportionate.

Officers are also aware of Article 6, the focus of which (for the purpose of this decision) is the determination of an individual's civil rights and obligations. Article 6 provides that in the determination of these rights, an individual is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal. Article 6 has been subject to a great deal of case law. It has been decided that for planning matters the decision making process as a whole, which includes the right of review by the High Court, complied with Article 6.

3.0 Recommendation

That the Northumberland County Council (Land at Hebron Hill Farm, Hebron, Morpeth, Northumberland) Tree Preservation Order 2023 (No 01 of 2023) be confirmed without modifications.