

**Tree Preservation Order No. 1/2018
Worsbrough Hall Wood**

1. Purpose of the Report

- 1.1 To inform Members that an objection has been received in respect of Tree Preservation Order 1/2018 and to seek confirmation of that Order without modification.

2. Recommendations

- 2.1 That the Executive Director Core Services be authorised to confirm Tree Preservation Order No. 1/2018 without modification.**

3. Background

- 3.1 On 7th March 2018, the Borough Secretary, in consultation with the Head of Planning made Tree Preservation Order No. 1/2018 for Worsbrough Hall Wood, Worsbrough. It came into effect immediately but unless confirmed expires after six months.
- 3.2 The Order was made to update and include all the trees in the section of woodland shown on the plan in light of a recent Court judgement relating to part of the area. The land is in multiple ownership.
- 3.3 A Parkland Order (TPO 1/1953) from 1953 protected trees within the area of land that is the subject of this report. The Council considered some of the Parkland Order trees to be under threat from one of the owners of the land. An injunction was sought and during those proceedings it was determined that the original Parkland Order (TPO 1/1953) only protected those trees present when the TPO was made. As such the natural regeneration essential to a woodlands function and any established trees under 65 years old were not protected as previously thought. The new TPO was therefore created to remedy this and ensure the woodlands long term future. It remains in the interest of amenity to continue to protect this woodland.

4. Objection

The Council has received a letter of objection from one of the owners in respect of their land. The objection is summarised in this report:

5. **Observations made by The Tree Officer**

- 5.1 The woodland offers a high degree of amenity, both visual and environmental.
- 5.2 The woodland contains a mixture of species and age ranges. There are numerous mature specimens of Oak, Ash and Sycamore dominating the woodland with occasional other species. There is also a high level of natural regeneration within the woodland with a full age range of trees present in many parts.
- 5.3 The particular area of woodland of concern to the objector is a leg of the woodland running parallel to Sheffield Road to the rear of Holly View Farm known as Walk Plantation which is part of the original 1953 Order. The boundary of the new TPO follows the boundary of the old Order and does not implicate any more of the woodland than the original 1953 Order.
- 5.4 Several of the objections raised are not relevant to the appropriateness of this Order and relate directly to the wording and the nature of a Woodland Tree Preservation Order in general which cannot be amended.
- 5.5 The objector asks the Council to modify the Order to exclude Walk Plantation or in the alternative to exclude trees below 3.5 metres in height. The objector lays out several points of objection to support this which I will summarise and address below.
- 5.5.1 The objector claims that the new Order extends too far and that the original Order offers sufficient protection for the woodland in their ownership. Following the Court case however, it has been found that the TPO is not fit for purpose as the original Order does not protect the woodland and only covers trees which were present in 1953. The decision was therefore taken to protect the woodland with a new TPO which does protect the woodland fully as a woodland and not as a collection of individual trees over 65 years of age. It is not a condition of making or confirming a tree preservation order that those trees need to have been under threat. The Council needs to be satisfied that it is expedient in the interests of amenity taking into account the objection, before confirming the order.
- 5.5.2 The objector also states that she is now unable to remove/ top/ lop self seeded seedlings/saplings or small trees which are under 3.5m in height which were previously not protected. Given that natural regeneration within a woodland is highly important to its long term function and sustainability the suggestion that not being able to undertake potentially damaging works is an issue demonstrates that the Woodland TPO is appropriate and necessary.
- 5.5.3 The objector also raises concerns over the management of the woodland and the inclusion of all trees regardless of condition and individual amenity. It should be noted that the creation of a TPO should not prevent good

management of individual trees or woodlands as a whole. Subject to the necessary consents from either the Forestry Commission as part of a felling licence for larger scale works or a tree works application to ourselves as the Local Planning Authority for smaller scale works there should be no issue undertaking necessary and appropriate work for either woodland or general land management. The aim of a Woodland Order is to protect the woodland as a whole and does not relate to the amenity of individual trees, any trees requiring removal and not fitting into any exemption would require a tree works application before being felled.

5.5.4 The objector has also taken issue with the description of the woodland as mixed deciduous and claims that confusion could arise where shrubs etc. are concerned. It would not be practical or reasonable to list every woody species within a woodland. Only the trees are protected as part of a woodland Order Low growing woody species such as Bramble etc. are not protected.

5.5.5 The objector has stated that no consideration has been given to Article 1 of the First Protocol of the European Convention on Human Rights, incorporated into English Law by the Human Rights Act (Right to Peaceful Enjoyment of Possessions). Article 1 is a qualified right which means it is subject to the rights of the state to control the use of property in the general public interest. The confirmation of this Order would not infringe this right since its imposition is intended for general public interest considerations of public amenity.

6. Options

- 1) To confirm the TPO as originally made.
- 2) To confirm with a modification to exclude the Walk Plantation land.
- 3) To confirm with a modification to exclude trees in existence below 3.5 metres in height unless specifically specified respect of the Walk plantation land.
- 4) Not to confirm the TPO.

7. Recommendations

7.1 That the Order should be confirmed without modification.

8. Financial Implications

8.1 None.

9. Employee Implications

9.1 None.

10. Crime and Disorder

10.1 None.

11. **Human Rights Act**

11.1 The Council has considered the implications of the Act in the way it administers its responsibilities under the Town and Country Planning Act 1990. Further comment is in the body of the report.

12. **Consultation**

12.1 None.

13. **Local Area Implications**

13.1 None.

14. **List of Appendices**

14.1 None.

15. **Background Papers**

- i) TPO 1/2018 Worsbrough Hall Woodland, Worsbrough.
- ii) Letter of objection.

Authors Name:
Edward Jowett, Tree Officer
01226 772557

5th June 2018

