

SUBJECT:	Objection to the South Bucks District Council Tree Preservation Order No. 03, 2019 at Tamarisk, 26 Howards Thicket Gerrards Cross SL9 7NX
REPORT OF:	Head of Planning and Economic Development
REPORT AUTHOR	Richard Garnett, Arboriculturalist

1. Purpose of Report

- 1.1 This report presents objections raised to the above Tree Preservation Order.
- 1.2 The Committee is requested to determine whether to confirm the Order as made, not to confirm the Order or to modify the Order to exclude one or more of the trees.

2. Links to Council Policy Objectives

- 2.1 The placing of Preservation Orders on trees makes an important contribution to the Council's aim of "a sustainable and clean environment" and its objective of "ensuring all planning decisions; applications, consultation responses, enforcement, tree protection orders, are of high quality and contribute towards the Council's aims".

3. Background

- 3.1 The South Bucks District Council Tree Preservation Order No. 03, 2019 was made in respect of four trees situated within the above property. A copy of the TPO with plan is appended at 'Appendix 1'.
- 3.2 The Order was made following a written request from a member of the public on the 3 August 2018 because the property was going to be put on the housing market and they were concerned that trees may be removed especially in regards to a mature beech tree located in the front garden. On the 19 September 2018 Mr Garnett emailed the member of the public advising that he had assessed the expediency and amenity value of the trees and he had recommend a new Tree Preservation Order to protect all the significant trees. This recommendation would then be considered by the Planning Department. A copy of this assessment is appended in 'Appendix 2'.

- 3.3 The Order was made on 28 March 2019 by the Planning Department and remains in force for a period of 6 months (i.e. until 28 September 2019). If the Order is confirmed the protection becomes permanent but can be modified; if the Order is not confirmed it ceases to have effect.

4. Statements by the Objectors

- 4.1 An email objection to this Order was received on 9 May 2019 from the new owners of this property. A copy of this objection is appended at 'Appendix 3'.
- 4.2 To ascertain whether a site visit was required because of the raised objection, an email was sent to the landowner on the 9 August 2019 with a copy of the drafted report. On the 15 August 2019 an email was received with further comments and a copy of this email is appended at 'Appendix 3'.
- 4.3 In regards to these additional comments (4 points) received:
1. I do not consider the silver birch to be of very low amenity value.
 2. I do not consider it to be a poor specimen with a short life span.
 3. In my opinion both birch trees contribute to the visual amenities and screening between both properties.
 4. Noted that no intention of felling the silver birch or that it should be protected by a Tree Preservation Order.

5. Discussion

- 5.1 The Objections to this Order on the 9 May 2019 are listed below with officer response to the points raised:

5.1.1 *"It is appreciated that the intent of the incoming owners is unclear to the Council but for the record we would like to state that we never had or currently have any intention in felling the trees in question".*

Response: Noted.

5.1.2 *"The 2 Beech trees at the front of the property (identified as T1 & T2) can be seen from the public realm and therefore provide amenity value. It is understood why these substantial trees have had a TPO placed on them.*

Response: A copy of the Tree Preservation Order assessment for both beech trees (T1 and T2) can be found in Appendix 2 of this report.

5.1.3 *"The 2 trees at the rear (Tulip - T3 & Birch - T4) are not clearly visible from the public highway and thus do not provide any amenity value to the local community. They are not a notable feature in the local area and cannot be used as a waypoint. Moreover they do not provide substantial screening between properties, as there are already trees and hedges present".*

Response: A copy of the Tree Preservation Order assessment for the Tulip and Birch tree's (T3 and T4) can be found in Appendix 2 of this report. As can be seen from this assessment the tulip tree scored the same amenity value score as beech T1 so I disagree that it does not have any amenity value. The birch did score lower but it is visible from the public highway and does help to provide some screening between properties.

5.1.4 *"Furthermore there are already trees as part of a woodland which are protected at the rear of the property, so a further TPO seems unreasonable and not expedient for the following reason; the TPO may have been served to enhance amenity and provide natural screening (T3 & T4), however this is already addressed with the previous TPO (South Bucks District Council TPO No.20, 2006) thus TPO 0003, 2019 is not expedient. Added to this, if screening between properties was ever an issue further down the line due to any development, it can and should be secured through planning conditions".*

Response: Tree Preservation Order known as No.20, 2006 is a woodland designated Order which covers woodland situated within the rear gardens of properties situated in Fulmer Drive and Howards Thicket. The reason for including Tulip (T3) and Birch (T4) in Order No.03, 2019 is that they were considered to be worthy of a Tree Preservation Order status as outlined in the assessment in 'Appendix 2' and are visible from the public realm. Before recommending the creation of any new Order, the amenity value of the trees to be protected is one of the arboriculturalist primary considerations. There are no specific, prescribed criteria for calculating a tree's visual amenity with a view to considering its justification in a new Order; instead Local Planning Authorities are advised to establish a consistent approach to such considerations.

A planning condition is only for 5 years so if the Council wants to protect trees because they are deemed to be of high amenity value because they are visible from the public realm the Town and Country Planning Act 1990 provides the mechanism for protecting trees by making a new Tree Preservation Order.

5.1.5 *"Lastly, we believe the TPO has not been served correctly on all persons interested in the land (property exchange took place on 15th March and the TPO was served on 28th March) but no copy of the order was provided until it was queried. Was this served in a number of ways? Is there evidence to prove this was served correctly on all persons interested in the land. Please provide this evidence. If it is confirmed that the TPO was not served correctly or evidence of this cannot be shown, please provide information of the revocation of the TPO at least 24 hours prior to re-serving, to follow best practice. This should be in the form of written confirmation, to the email address this has been sent from".*

Response from Planning Support Team: We comply with the service process set out in the Town and Country Planning (Tree Preservation) (England) Regulations 2012 and in Government Guidance "Tree Preservation Orders and trees in conservation areas". Although the Council was aware that the property was likely to be sold we were not aware that contracts had been exchanged. In order to check the owners of 26 Howards Thicket and of adjacent properties who might have a right to work on the trees we carried out a Land Registry search on 27th March 2019. A "day list" search showed no pending applications for 26 Howards Thicket. Notification letters were sent to those listed on the Land Registry Title documents and to the occupiers by Royal Mail recorded delivery. A copy of an extract from our recorded delivery receipt book is appended in 'Appendix 4'.

Letters were sent by first class to post to the owners /occupiers of 39 Howards Thicket, 94 and 96 Fulmer Drive, Buckinghamshire County Council and the Town Council.

- 5.1.6 Photographs of the trees are appended and annotated at 'Appendix 5' and it is considered in this instance that a Member site visit is not necessary and has not therefore been recommended. The objectors do of course have the right to request a Member site visit if they believe it necessary but have confirmed that a site visit by the Committee is not required.

6. Resource and Wider Policy Implications

- 6.1 There are no additional resource implications arising from the decision whether or not to confirm or modify the Order.
- 6.2 The referral of this matter to Planning Committee is in accordance with Article 6 of the Human Rights Act 1998, the right to a fair hearing, which is an absolute right. Those persons who made representations in objection to the TPO, will be sent a copy of this report and invited to make written representations on it to the Committee, and invited to attend the Committee meeting to make any further verbal representations at the meeting. The Planning Committee must give full consideration to any such representations.
- 6.3 Article 8 and Article 1 of the First Protocol – the right to respect for private/family life and the protection of property – also needs to be considered. These are qualified rights and can only be interfered with in accordance with the law and if necessary to control the use of property in accordance with the law and if necessary to control the use of property in accordance with the general interest. The recommendation to continue the protection of the subject trees by confirming the TPO with modifications is considered to be in the general interest of the community and is considered to be both proportionate and justified.

7. Recommendation

7.1 It is recommended that the Order be confirmed as made, without any modification.

Officer Contact:	Richard Garnett, Arboriculturalist Tel: 01895-837376 Email: Richard.Garnett:chilternandsouthbucks.gov.uk
Background Papers:	Appendix 1: Tree Preservation Order No. 03, 2019 Appendix 2: Tree Preservation Order Assessment Appendix 3: Objection Appendix 4: Extract of Recorded Delivery Receipt Book Appendix 5: Photographs of T1-T4 from public realm