

## Bath & North East Somerset Council

MEETING:	Development Management Committee
MEETING DATE:	17th January 2018
TITLE:	Bath and North East Somerset Council ( Woodland adjacent to Eastwell, Upper Lansdown Mews, Lansdown, Bath No.313 ) Tree Preservation Order 2017
WARD:	Lansdown
<b>AN OPEN PUBLIC ITEM</b>	
<b>List of attachments to this report:</b> Tree Preservation Order map Letter of objection dated 31st August 2017 Letter to objector dated 15th September 2017	

### 1.0 THE ISSUE

- 1.1 An objection letter has been received from the owner of the property following the making of the Tree Preservation Order entitled Bath and North East Somerset Council ( Woodland adjacent to Eastwell, Upper Lansdown Mews, Lansdown, Bath No.313) Tree Preservation Order 2017 ("the TPO").
- 1.2 The TPO was provisionally made on the 27<sup>th</sup> July 2017 to protect a woodland of mixed tree species which included Ash, Beech, Sycamore, Yew and Holly shown on the accompanying map. The woodland is considered to make a contribution to the landscape and visual amenity of the locality which is within Bath Conservation Area and World Heritage Site.

### 2.0 RECOMMENDATION

- 2.1 The Development Management Committee is asked to confirm the Tree Preservation Order without modification.

### **3.0 FINANCIAL IMPLICATIONS**

- 3.1 Financial: Under the law as it stands the owner of the trees cannot claim compensation from the Council for making them the subject of a tree preservation order. However if a tree is covered by a tree preservation order and the Council refuses an application to fell the tree, the owner may be able to claim compensation if he or she suffers a loss or damage as a consequence of that refusal.
- 3.2 Staffing: None.
- 3.3 Equalities: In deciding to make the TPO the provisions of the Human Rights Act 1998 have been taken into account. It is considered that Article 8 (right to respect for private and family life) and Article 1 of the First Protocol (protection of property) of the convention rights apply in this matter. Confirmation of the TPO is however, considered to be a proportionate interference in the wider public interest.
- 3.4 Economic: None.
- 3.5 Environment: The trees which are the subject of this report make an important contribution to visual amenity and landscape in the local area.
- 3.6 Council Wide Impacts: The confirmation of the TPO will involve officers from Legal Services. Officers from Development Management will need to take account of the trees when considering any application for development or alterations on the site which might affect it.

### **4.0 THE REPORT**

#### **4.1 Background**

- 4.2 A request was received from the woodland owner and neighbour for a Tree Preservation Order because they considered that the woodland was an important visual amenity forming part of the local green infrastructure and skyline of the Bath World Heritage Site. The owner was concerned that should she move away and the house be sold that there was a danger of the woodland being eroded or lost.
- 4.3 The site was visited as a result of the request and it was considered that the diversity in the age range of trees within the woodland was important in contributing towards the quality; character and future contribution to the area. The site is within Bath Conservation Area which affords protection, however, the natural regeneration with trunk diameters under the threshold requiring notification could be removed and future tree notifications relating to individual trees could result in an incremental erosion and damage to the integrity of the woodland.
- 4.4 The woodland is considered to provide an important visual amenity and to contribute to the landscape character of the locality and it is considered expedient to make a Tree Preservation Order at this time.

## 4.5 Responses to the Tree Preservation Order

- 4.6 The Council is required to take into account all duly made objections and representations before deciding whether to confirm the TPO.
- 4.7 One letter of objection has been received from the owner of the woodland in which the owner objected to the inclusion of a flat area of land within the northern half of the site and a track accessed from Somerset Lane along the western boundary of the site. A response to the objection was sent to the owner however no written response has been received. The decision on whether the TPO should be confirmed or not must therefore be made by Councillors. Committee Members are advised to read the letter of objection.
- 4.8 The main objection is that the TPO on the trees by the track and within the flat area of land would result in it being too onerous and costly to manage the land.
- 4.9 The objection to the Tree Preservation Order outlined in section 4.8 has been considered by the officer and the following comments are made:

i) Irrespective of the Order, the whole area is already protected by the Bath Conservation Area so any works to trees with a trunk diameter of 7.5cm or above when measured at 1.5m above ground level would require 6 weeks notification to the Council. This also applies to the remaining part of the track which links to Somerset Lane. A notification does not have to be made on any particular form but must be in writing. There is no record of previous notifications to undertake such works by the track so the objection may relate to the potential for future requirements rather than current requirements.

ii) A TPO means that an application is required for any works. The application must be made on a particular form and the Council has up to 8 weeks in which to determine an application. This means that the Council has an extra two weeks in which to respond compared to a conservation area notice.

iii) Under the Neighbourhood Planning Protocol a decision can not be made prior to the expiry of 21 days following receipt of either a TPO application or conservation area notice. However, if the proposed works are proportionate to and based on sound justification and are not contentious then a decision on either a TPO application or conservation area notice can be issued immediately after the expiry of 21 days.

iv) A TPO application can be made for repeat works for a given number of operations over a period of time which is not readily possible within a conservation area notice. An opportunity therefore exists to maintain clearance of the track without the requirement to submit annual applications should regular clearance be required in the future.

v) There is no fee to submit a TPO application just as there is no fee to submit notifications for tree works within a conservation area.

vi) The woodland designation provides an opportunity for succession trees to establish in the flat area which would provide continuity in tree cover on the site for the future. The flat area also provides a better position for trees to grow rather than on more steeply sloping land. The development of mature trees in the flat

area would also reduce the need for replacement planting near to the property as and when the existing trees must be removed.

vii) The woodland category's purpose is to safeguard the woodland as a whole irrespective of whether some trees contained within the woodland lack individual merit. In addition, trees and saplings which grow naturally or which are planted within the woodland after the TPO has been made are also protected by the TPO.

viii) Any attempt to exclude certain parts of the parcel of land from the TPO is likely to introduce uncertainty over which trees are protected or not for the current and any subsequent land owner, their agents and the Council.

#### **4.10 Relevant History**

4.11 12/00374/TCA – T1 Bay Laurel - crown reduction to roof line, trim side; T2 Yew - 5 cuts off the roof; T3 Leyland Cypress- trim by 1m to roof; T4 Ash - remove one branch back to stem; T5 x2 Sycamore - Pollard to 1.8m; T6 Apple - remove one branch by 1m – No Objection.

#### **5.0 LEGAL AND POLICY FRAMEWORK**

##### Tree Preservation Order

5.1 A Tree Preservation Order is an order made by a local planning authority in respect of trees and woodlands. The principal effect of a Tree Preservation Order is to prohibit the:

Cutting down, uprooting, topping, lopping, wilful damage or wilful destruction of trees without the council's consent.

5.2 The law on TPOs is in the Town and Country Planning Act 1990 and in the Town and Country Planning (Tree Preservation) (England ) Regulations 2012 which came into effect on 6<sup>th</sup> April 2012 .

5.3 A local planning authority may make a tree preservation order if it appears

“Expedient in the interests of amenity to make provision for the preservation of trees or woodlands in their area”

5.4 The Council's Arboricultural Officers have a written method for assessing the 'Amenity' of trees and woodlands. This is in keeping with Government guidance, and takes account of the visual impact of trees and their contribution to the landscape, their general overall health and condition, their longevity and their possible or likely impact on services and property.

5.5 This assessment concluded, having taken account of, visual amenity, tree health considerations and impact considerations, that it would be expedient in the interest of amenity to make provision for the preservation of the woodland. The TPO was made on 27th July 2017 and took effect immediately and continues in force for a period of six months (27th January 2018).

## Planning Policy

### 5.6 Bath and North East Somerset Placemaking Plan 2015

272. 'Trees are an important part of our natural life support system: they have a vital role to play not just in the sustainability of our urban and rural areas, but as an important component of green infrastructure networks. They benefit:

- the local economy – creating potential for employment, providing a sustainable source of compost and biofuels and the raw materials for businesses, encouraging inward investment, bringing in tourism and adding value to property.
- the local environment - by reducing the effects of air pollution by removing sulphur dioxide, ozone, nitrogen oxides and particulates and reducing storm water run-off and soil erosion, acting as carbon sinks and producing oxygen; reducing energy consumption through moderation of the local climate by providing shelter and shade and reducing glare, reflection and wind speeds. They can provide screening and privacy or emphasize views and architecture. They provide a wide range of wildlife habitats.
- the health and wellbeing of our community – by providing shade from harmful ultra-violet radiation and improving the visual quality of our landscape and our sense of wellbeing. Studies have shown that the calming effect of trees can reduce stress levels and improve recovery time after surgery. Trees and woodlands provide opportunities for recreation and education.'

273. 'Much of the tree cover in the urban areas is in a critical condition and there is little or no replacement planting for over-mature trees in decline. Infill development has often reduced the space available for planting large tree species. In addition, new tree planting takes many years to mature. The management and retention of significant trees is therefore pressing.'

274. 'Bath & North East Somerset has a duty under the Town and Country Planning Act 1990 to ensure tree and woodland preservation wherever it is appropriate. The Council will continue to protect trees and woodlands through Tree Preservation Orders (TPOs) as appropriate. There is also a level of protection afforded to trees in Conservation Areas (CAs). However there are many trees of value outside these designations and careful consideration should be given to the removal of any tree.'

## **6.0 CONCLUSION**

- 6.1 The woodland contributes towards the local visual amenity and landscape character of Bath Conservation Area and World Heritage Site.
- 6.2 Confirmation of the TPO would help to support the retention of the woodland and would ensure that its contribution is duly considered when determining any future applications.
- 6.3 An application supported by sound arboricultural reasons for pruning or felling as the need arose in the future can be made under the TPO. The Council will then be able to condition the quality of the workmanship or replacement planting as appropriate.

6.4 In keeping with the Council's commitment to conserve and enhance the environment, it is recommended that the Committee confirm the TPO without modification.

<b>Contact person</b>	Jane Brewer 01225 477505
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**Scale 1:1000**  
**Date: July 2017**  
**Plan No: 500/313;**  
**17/00005/TPO**  
**Grid Ref: ST 745661**

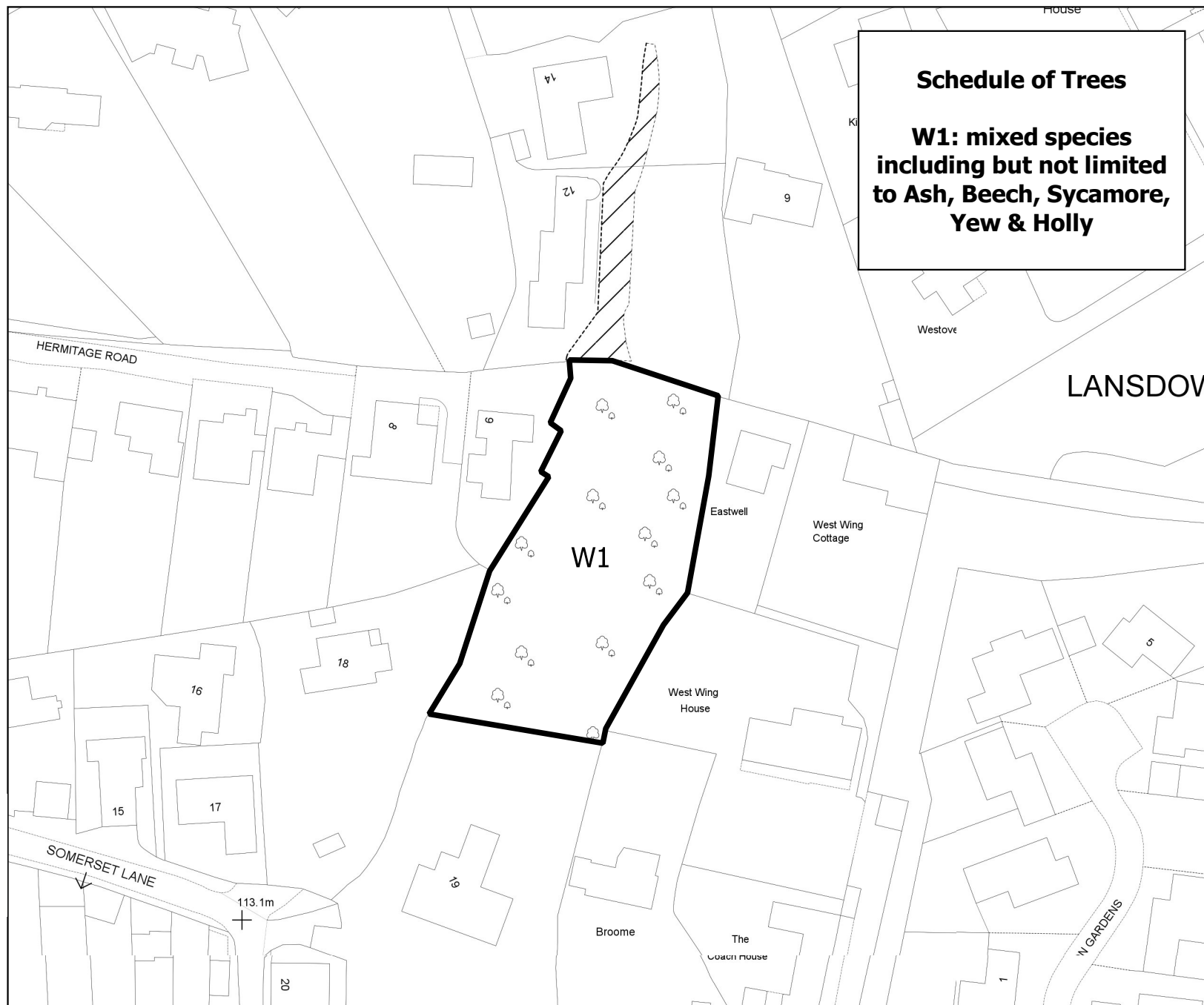
**Title:**  
**TOWN AND COUNTRY**  
**PLANNING ACT 1990**  
**BATH AND NORTH EAST**  
**SOMERSET COUNCIL**

**(Woodland adjacent to**  
**Eastwell, Upper Lansdown**  
**Mews, Lansdown,**  
**Bath no. 313)**

**TREE PRESERVATION**  
**ORDER 2017**

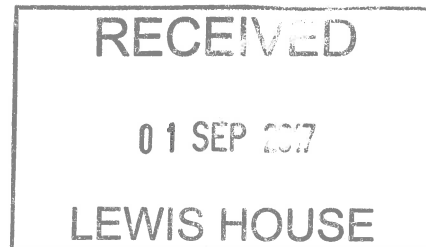


**Mark Reynolds, Group Manager**  
**Development Management**



Eastwell  
Upper Lansdown Mews  
Bath  
BA1 5HF

Jane Brewer  
Senior Arboricultural Officer  
Bath and North East Somerset Council  
Planning Services  
Lewis House  
Bath  
BA1 1JG



31 August 2017

Dear Ms Brewer,

**Re: Bath and North East Somerset Council (Woodland adjacent to Eastwell, Upper Lansdown Mews, Lansdown, Bath No. 313) Tree Preservation Order 2017.**

I am responding to the above Tree Preservation Order (the 'Order'), which came into force on 27 July 2017 on a temporary basis, and for which any representations are requested by 1<sup>st</sup> September 2017.

As the owner of the subject woodland, whilst I am keen to conserve the key benefits of the space I have a direct interest in this Order since it will affect the way in which the land is maintained as well as the cost and time involved. I am most concerned that the application of the Order to the whole woodland, instead of a more focussed approach on the larger trees, is too onerous and costly and will also prevent vehicle access required to maintain the site.

I would like to make the following points :

1. The woodland consists of two principal areas;
  - i) the main wooded area in the gully and along the eastern edge of the woodland, where most of the larger and well established trees are located; and
  - ii) an old established vehicular access track entering on the SW corner and running along the West of the wood leading to a mainly open and flat area at the northern end. It should also be noted there is a mains sewer running under this area of land which could also require access in future.

Note that there is no public right of way through the land.

2. The vehicle track is required for maintenance work in the woodland, including allowing access for any arboricultural work and maintenance/repair of the high boundary walls. This track has recently become overgrown in some places with a number of sapling and shrubs which need to be cut back to allow access. The current open area would need to be kept clear of any sapling so that maintenance

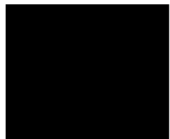


equipment can be moved and positioned. My intention has therefore been to clear the track and keep the open area free of any larger growth.

3. I therefore propose that the Order be amended in such a way as to focus on conserving the trees in the gully (see para 1(i) above), whilst removing any restrictions on the driveway and flat areas (see para 1(ii) above). By amending the Order on the Woodland and applying instead on a defined area of trees, it would also enable the area to be maintained more easily and in a less costly way by the property owner.
4. It is my belief that the proposed limitations in para 3 above, would not significantly impact the amenity of the woodland, as set out below;
  - a. Visual amenity and skyline: the visibility and skyline from the public road on Lansdown Place West and Somerset Place would be unaffected as the large trees in the gully which provide these features would still be protected; it would retain a significant contribution to the landscape and the character of the conservation area
  - b. Diversity and green infrastructure— there would still be a diversity of age range of trees and natural regeneration in the main wooded area, as well as more open areas. There would be fewer sapling/shrubs along the trackway, but this growth has occurred mainly within the last 10 years, and has not been a long term feature of the woodland. There would still be a large green infrastructure, as has been maintained by my family since acquiring the land some 50 years ago.
5. I believe that the council should also take into account that I have voluntarily asked for advice from the council as to how to conserve this area. I had not envisaged, nor had fully explained to me, that the Order, by covering the entire woodland, would be as onerous nor that it would make it more difficult and costly for me to maintain the area.

I trust that my representations will be fully considered. I would also welcome an opportunity to discuss further with the arboricultural team and council before any decision is made to extend or amend the Order

Yours faithfully

A solid black rectangular box used to redact the signature of Mrs. Jean F. Jennings.

**(Mrs) Jean F Jennings**

Date: 15th September 2017  
Our Ref: TPO 500/313  
Direct line: (01225) 477505  
E Mail: Trees\_andwoodlands@bathnes.gov.uk

Mrs J F Jennings  
Eastwell  
Upper Lansdown Mews  
Lansdown  
Bath  
BA1 5HF

Dear Mrs Jennings,

**Bath and North East Somerset Council ( Woodland adjacent to Eastwell, Upper Lansdown Mews, Lansdown, Bath No.313 ) Tree Preservation Order 2017**

Thank you for your letter dated 31<sup>st</sup> August 2017 relating to the above.

I am sorry to note that you do not consider that I had fully explained to you the implications of the Order when we met. Please accept my apologies since it was not my intention.

I note that you consider that the TPO would result in it being too onerous to manage the land. Irrespective of the Order, the whole area is already protected by the Bath Conservation Area so any works to trees which are 7.5cm in diameter or above when measured at 1.5m above ground level would require 6 weeks notification to the Council. This also applies to the remaining part of the track which links to Somerset Lane.

A notification for tree works in a conservation area does not have to be made on any particular form, however, it must be made in writing, whereas, a TPO application must be on a particular form which I have enclosed. Any reputable Tree Surgeon should be able to submit a notification or application on your behalf, however, I can provide guidance should you wish to submit a notice or application yourself.

The woodland designation provides an opportunity for succession trees to establish in the flat area which would provide continuity in tree cover on the site for the future. The flat area also provides a better position for trees to grow rather than on more steeply sloping land.

I noted during my visit that the trees which you refer to near the eastern boundary are closer to your property. Any subsequent owner is more likely to be concerned about these trees than those further away in the flat area.

Development of mature trees in the flat area would also reduce the need for replacement planting near to the property as and when the existing trees must be removed.

Any attempt to exclude certain parts of the parcel of land from the TPO is likely to introduce uncertainty over which trees are protected or not for you, any subsequent owner and the Council.

I have noted your concerns relating to keeping the track clear. Under the Order, you are able to apply for repeat works within a set period of time. For instance, in one application you can apply for repeat pruning works to maintain clearance of the track to a given width and given height above the track of all growth for a period of 5 years.

You consider that the Order introduces additional cost and time to undertake maintenance of the site.

There is no fee required to submit Tree Preservation Order applications, just as there is no fee to submit notifications for tree works within a conservation area.

I acknowledge that there is a difference between time scales between a notification and application. A notification lasts for 6 weeks, whereas the Council must respond to a Tree Preservation Order application within 8 weeks. However, the Council is able to respond to both after 21 days if the works proposed are not considered contentious.

I have considered your comments and do not consider that the track and flat area should be excluded from the TPO. If you wish to maintain your objection then the decision on whether to confirm the Tree Preservation Order or not will be determined by the Development Management Committee.

I note that you would welcome an opportunity to discuss your concerns further which I am happy to do. I do not have your telephone number to arrange this so I would be grateful if you call on me on 01225 477505.

Yours sincerely

Jane Brewer (Mrs)  
Senior Arboricultural Officer  
Environment and Design Team

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