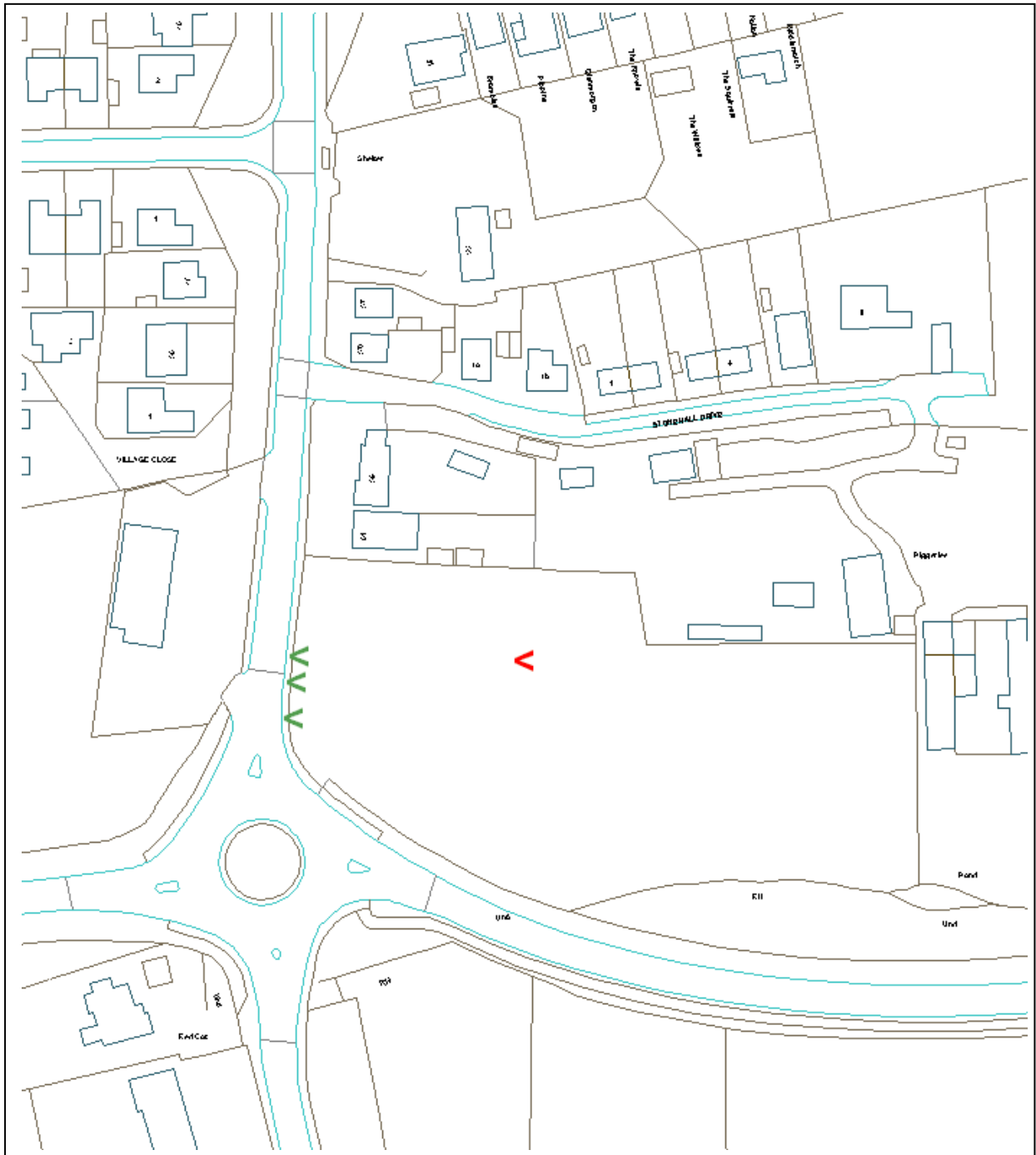


PLANNING COMMITTEE

24 JUNE 2014

REPORT OF THE HEAD OF PLANNING

A.1 PROVISIONAL TREE PRESERVATION ORDER - 14/00001/TPO - LAND AT JUNCTION OF LONDON ROAD AND CENTENARY WAY, LITTLE CLACTON, CO16 9RB



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Application:	14/00001/TPO	Town / Parish: Little Clacton Parish Council
Address:	Land at Junction of London Road and Centenary Way, Little Clacton, CO16 9RB	
Development:	T1, T3 - Oak. T2, T4 - Lime	

1.0 PURPOSE OF THE REPORT

- 1.1 To determine whether the provisional Tree Preservation Order, made in respect of 2 Oak trees and 2 Lime trees situated on land at the junction of London Road and Centenary Way, Little Clacton, should be confirmed, confirmed in a modified form or allowed to lapse.

2.0 BACKGROUND

- 2.1 On 19 December 2013 information was received by the Council that a large Oak situated at the above location was at risk of being felled. Later that day a site visit and inspection of the tree, and others on the land, was made to consider whether or not their condition and amenity value were such that they merited protection by means of a Tree Preservation Order (TPO).
- 2.2 On 2 January 2014 a new TPO was served to protect 2 Oaks and 2 Limes situated on the land at the junction of London Road and Centenary Way.

3.0 SITE ASSESSMENT AND AMENITY VALUE

- 3.1 The purpose of the site visit made on 19 December 2013 was to carry out an assessment of the amenity value of the trees situated on the land. Except for the subject trees the land has little significant vegetation except for a small Blackthorn on the boundary with Centenary Way and a Silver Birch on the northern boundary. The grass is short because of rabbit activity and there is a gradual encroachment of the land by bramble and self-sown broom.
- 3.2 The single Oak situated centrally on the main body of the land is visually prominent and can be seen from a considerable distance. It has a well formed crown and from a visual inspection from the ground, has no significant defects. It has high visual amenity value.
- 3.3 The three trees situated on the boundary with London Road are collectively cohesive and have individual visual amenity value. The northernmost Lime is prominent in the street scene and has extensive epicormic (suckering) growth that is currently encroaching onto the adjacent footway. Relatively minor works could be carried out to address this issue.
- 3.4 The centrally situated Oak is in good condition and is a dominant feature that makes a positive contribution to the appearance of the public realm. The crown has some small dead branches and there is one medium sized bough that has become detached and 'caught up' in the canopy. Only minor works are required to maintain the tree in good condition.
- 3.5 The third, and southernmost tree, also makes a good contribution to appearance of the area although there is a degree of dieback in the upper crown. In other respects the tree appears to be in good health. The tree is showing a sign of 'secondary

crowning' which is the development of a new crown beneath the branches of tree that are dying back. The removal of those branches would improve the appearance of the tree and reduce the likelihood of them falling onto the highway.

- 3.6 All four trees make a positive contribution to the character and appearance of the area.
- 3.7 The trees have high visual amenity value. As it has been brought to the attention of the Council that one of the trees on the land was at risk of being felled a new Tree Preservation Order was made in order to ensure that the trees, 2 Oaks and 2 Limes, are retained.

4.0 REPRESENTATIONS/OBJECTIONS

- 4.1 Following notification of the making of the Order to the owner of the property and adjacent properties, one letter of representation objecting to the Tree Preservation Order has been received.
- 4.2 The objection, made by Mr C T Gaze, must be fully considered to determine whether or not to confirm the Order.
- 4.3 The objection is as follows:
 - 1. *The site currently has full approval for development as a Motel with a fully approved Essex County Council access for which development was commenced some time ago and is capable of being progressed.*
 - 2. *At the time the Motel development was commenced the only trees covered by an Essex County Council TPO were this on the frontage of the site shown as T2 (Lime), T3 (Oak) and T4 (Lime) on your enclosed drawing. The tree shown as T1 (Oak) on your drawing has never been the subject to a TPO and could be removed if we wish to progress further development of the Motel.*
 - 3. *Tendring District Council has recently included this site for residential development as preferred use within the new Local Plan and as a consequence my agent, Paul Newbould Architectural Services have been in discussion with the forward planning officers of Tendring District Council And Essex County Council Highways Department in order to prepare a comprehensive site layout for preliminary discussions with your planning officers prior to submission for full planning consent.*
 - 4. *Negotiations with Essex County Council Highways Department for a revised access to accommodate residential development to the site were successfully completed early November 2013, and in order to prepare a preliminary layout scheme my agent suggested we contact TDC Tree and Landscape department to ascertain the validity of any TPO's that might possibly affect the development of the site.*
 - 5. *I visited the Council Offices Weeley on 21st November 2013, and spoke with Clive Dawson the Planning Officer responsible for TPO's in the Tendring area. I explained the nature of my enquiry and the advice that was required in order to fulfil any obligations that we may have for removal of the trees in question. Mr Dawson confirmed that there were no TPO's to the boundary fronting London Road and the Leys Motel site and there were no TPO's within the boundaries of the Ley's site including the tree indicated as T1(Oak) on your enclosed drawing.*

Further advice was that Essex County Council previously had a TPO on an area to the frontage of London Road; however, the ECC had revoked its authority in this area and passed responsibility to Local Authorities. Mr Dawson informed me that Tendring District Council had decided not to re-impose a TPO to this site. I was further advised that trimming/lopping or removal of the trees within the boundaries of the site and those fronting London Road would not need the consent of Tendring District Council and I would be under no obligation to inform them prior to works being carried out.

Acting on the advice received a contractor was appointed to carry out the required works, however due to bad weather and predicted bad storms and high winds it was considered prudent to delay the works on health and safety grounds until the weather had improved sufficiently.

Upon receipt of your correspondence 6th January 2014, I telephoned Mr Dawson in order to complain of the conflicting advice that we had previously received and the manner in which the TPO had been applied, I asked Mr Dawson if he recalled the nature of our enquiry and discussions of 21 November 2013, to which he confirmed the advice that he had previously given.

- 6. I further commented on the fact that we were concerned by the manner on how this matter had been applied which could possibly have placed me in the position of having legal action taken against me. Mr Dawson responded by stating that had we carried out the removal of the trees prior to the formal notice being displayed on the highway then we would have acted within the law and your Authority would not have been in the position to take action against us*
- 7. I advised that the site had benefit of Full Detailed Consent for the construction of a Motel and Conference Centres and twenty sleeping cabins for which development had previously begun and was capable of being progressed further to completion should we wish, and as a consequence we would be within our rights to remove the trees and to this effect could not understand a valid reason for the placement of a TPO order on the site. Mr Dawson confirmed that we would be within our rights to remove the trees should we progress further development of the Motel, however, should we submit a fresh application for residential development then we would be required to seek removal of the TPO order.*
- 8. We have owned this site for many years and have been involved in various discussions with the Local Authority regarding an alternative development scheme, during the whole of this period the question of TPO's has never arisen until our enquiry of 21st November 2013 and to this effect would respectfully suggest that this officer has abused his position in providing conflicting advice and then placing a TPO order on this site within weeks of our enquiry causing considerable delay and inconvenience to our residential layout proposals.*
- 9. Had we been given the opportunity to discuss our preliminary residential proposals with your planning officer prior to the placement of this order, we are confident that we could have agreed a suitable replacement tree scheme that would be acceptable to both parties.*
- 10. In our own interest we have sought preliminary Barristers opinion and have been informed as follows:-*

The actions of this officer could be considered as not best practice, which could possibly result in raising a formal complaint.

The current extant planning consent for the Motel development overrides the TPO order, which would result in the removal of the trees.

11. In view of the above objections, comments and the confusing advice tendered, I would formally request a delay in the confirmation of this Order and would request a meeting with your office, ourselves and our agent be arranged in order to examine our concerns in more detail with a view to resolving any issues outstanding to the satisfaction of both parties.

4.4 To address the objections raised in Mr Gaze's letter and to fulfil his request for a meeting; on 9 May 2013 Clive Dawson, Tree and Landscape Officer and William Fuller, Planning Officer (Policy) met with Mr Gaze, his son and his agent, Mr Newbould. Subsequently the Councils Senior Solicitors view was sought on the implications the extant planning permission has on the validity of the TPO.

4.5 The response to each point above is as follows:

1. It is accepted that planning permission TEN/1106/80 has begun and that development could continue in accordance with the consent.
2. The owner of the land is correct that at the time of the above development began only the three trees on the boundary with London Road were protected by a TPO administered by Essex County Council. This order was revoked by them on 2 February 2010 as part of a review of their role in tree preservation in Essex. The tree preservation order process is now solely administered by Tendring District Council and the four subject trees are protected by a Tendring District Council Tree Preservation Order.

With regard to the statement that the tree (T1 Oak) could be removed in order to progress the development of the land: *The Town and Country Planning (Tree Preservation) (England) Regulations 2012* contains a list of exceptions to the prohibited activities set out in the regulations. This does not mean that an extant planning permission overrides a Tree Preservation Order but allows for works to trees 'so far as such work is necessary to implement a planning permission'. Therefore if someone begins development authorised by a full planning permission and they reach a point, in the course of the development, where there is a real and genuine need to cut the tree(s) down in order to complete the development and there is no reasonable alternative then the exception applies.

3. The fact the trees are formally protected does not in alter the intended use of the land however they are a 'material consideration' in the planning process and as such any development proposal will need to take them into account.
4. The Council recognises that the owner of the land has been in discussion with both Essex County Council and Tendring District Council regarding the development potential of the land.
5. The interaction described by Mr Gaze is an accurate record of the conversation held with the Council's Tree and Landscape Officer however to clarify part of the exchange; Mr Gaze is correct that Essex County Council revoked the TPO and that Tendring District Council decided not to make a new TPO immediately, however this decision was made because the trees were not considered to be at

risk of being felled, at that time, and not because they did not meet the criteria under which they merited protection.

Prior to the revocation process Essex County Council funded an independent inspection of all trees affected by their Tree Preservation Orders to determine whether or not they met the criteria under which they justified protection by a TPO. Both Limes (T2 & 4) and the Oak (T3) met the criteria.

At that time it was not considered practical or desirable to replace all Essex County Council TPO's with Tendring District Council TPO's but that new TPO's would be made as and when it appeared necessary.

As the Council was made aware of a potential threat to one of the trees on the land a site visit was made to carry out an assessment of the general health, condition and amenity value of the trees. This resulted in the new TPO being made.

6. Mr Gaze is correct that no action, against him, would have been possible if works to the trees had been carried out before the new TPO was made. However to make land owners and the general public aware that a new TPO has been made a copy of the TPO is sent to the owner of the land on which the trees are situated and site notices are placed in prominent locations. In this instance a copy of the TPO was sent to Mr Gaze and two site notices were erected on site. One was tied to the gate in London Road and the other tied to T1 (Oak).
7. This is an accurate description of part of the conversation between Mr Gaze and Mr Dawson and that point 3 describes when a protected tree may be felled in order to implement a planning permission. With regard to the capability of completing the development it should be noted that the construction of the Montana Roundabout and Centenary Way may well have taken place on land forming part of the development site set out in planning permission TEN/1106/80. It may be necessary to establish whether or not it is still possible to complete the development in accordance with the approved plans.
8. With regard to the role of the Councils Tree and Landscape Officer and the practical application of the powers available to The Council to make and administer TPO's it is the Councils duty to consider trees in the planning process and to make new TPOs in the interest of amenity when necessary. The trees are a material consideration in the planning process and a constraint on the development of the land; however they do not significantly compromise the development potential of the land.
9. The suggestion that a scheme of replacement tree planting could be agreed that would mitigate the removal of one or more of the trees on the land is the opinion of the landowner. The Council cannot agree that such a scheme would necessarily be achievable.
10. It is the Council's view that that the powers available to it to make a new TPO have been used in accordance with the current legislation and that current good practice has been followed.

The relationship between the extant planning consent TEN/1106/80 and Tree Preservation Order TPO/14/01 has been clarified in point 3 of this report.

11. As referred to in the introduction to the response to Mr Gaze's objection a meeting has taken place with Mr Gaze and his representatives and subsequently the views of the Councils Senior Solicitor have been obtained.
It is considered that the Council has acted within the powers bestowed upon it to make new Tree Preservation Orders and that Mr Gaze's concerns have been addressed albeit not to his satisfaction.

5.0 CONCLUSIONS

- 5.1 There is a statutory duty on local planning authorities, set out in Part 8 of The Town and Country Planning Act 1990, in the interests of public amenity to make provision for the protection of trees.
- 5.2 The trees have considerable amenity value to the locality. The removal of any of the trees would have a significant detrimental impact on the local environment and its enjoyment by the public.
- 5.3 Following consideration of the representations made by the owner of the land it is felt there is no substantive reason why the order should not be confirmed unaltered.

6.0 RECOMMENDATIONS

- 6.1 That Tree Preservation Order 14/01 is confirmed without modification.

Background Papers

None.