

**BABERGH DISTRICT COUNCIL**

**FROM:** Head of Contract and Asset Management

**REPORT NUMBER** **J52**

**TO:** LICENSING AND APPEALS COMMITTEE (TREES)

**DATE OF MEETING:** 9 July 2009

**TREE PRESERVATION ORDER BT 414 (TPO BT 414) – LAVENHAM CEMETERY, BRIDGE STREET ROAD, LAVENHAM.**

1. **PURPOSE OF REPORT**

1.1 To consider an objection to the making of a Tree Preservation Order (TPO) BT 414, and the recommendation that the Tree Preservation Order be confirmed without modification.

2. **RECOMMENDATION**

2.1 That Tree Preservation Order BT 414 be confirmed without modification.

The Committee is able to resolve this matter.

3. **FINANCIAL IMPLICATIONS**

3.1 The Town and Country Planning Act (Trees) Regulations 1999 contain provisions for financial compensation and this may be payable in certain circumstances if consent is refused under the Order for works to protected trees or if consent is granted subject to conditions. This is the case when making any Tree Preservation Order.

4. **RISK MANAGEMENT**

<b>Risk Description</b>	<b>Likelihood</b>	<b>Seriousness or Impact</b>	<b>Mitigation Measures</b>
The amenity of the area would be adversely affected if the tree were removed. Without a TPO, a good example of a mature Scots Pine would be lost forever.	Very High	Critical	Confirm TPO

Risk Description	Likelihood	Seriousness or Impact	Mitigation Measures
Problems could arise during the course of the TPO e.g. parts or all of the tree could become dangerous due to changes in its condition	Low	Critical	Confirm TPO Provisions in place under TPO arrangements allow appropriate remedial works to be undertaken should they become necessary due to the condition of the tree

5. **KEY INFORMATION**

- 5.1 Tree Preservation Order BT 414 was served on 19 March 2009. It has a provisional existence of six months and will expire on 18 September 2009 if not confirmed by this Committee.
- 5.2 The trees subject to this Tree Preservation Order are a group of mature Scots Pines (G1) located along the north eastern boundary of Lavenham cemetery, in Bridge Street Road, Lavenham.
- 5.3 G1 comprises important amenity specimens that appear of generally good form and vitality for trees of this type. They provide screening, shelter and a sense of enclosure for the cemetery, and afford good visual amenity to local residents and visitors to the area. Other nearby trees of a similar nature already benefit from formal protection.
- 5.4 The serving of this TPO has been prompted by the receipt of an application to fell one of the trees within the group following concerns about its condition. However, there are no signs to indicate that the tree is unsafe or unstable at the present time. Other trees that are not the subject of an application to fell, and not therefore considered to be currently under threat, have been included as the overall group is important for its cohesion and collective value.
- 5.5 Recent investigation as part of the application process has identified the trees as being unprotected, contrary to what has seemingly long been considered to be the case. This belief has probably resulted from the fact that other similar trees at the same location are protected. As a consequence Babergh District Council now considers one of the trees to be under threat and it should be afforded statutory protection by the making of a Tree Preservation Order.
- 5.6 One letter of objection to the making of TPO BT 414 has been received from Mr C Rockall acting in his capacity as adjacent landowner. The objector's wife is employed by Babergh District Council and the objection can be summarised as follows: -

- (a) Only a section of trees along the cemetery boundary have been the subject of TPO protection through the original TPO, for reasons unconnected with the protection of the overall cemetery boundary. It is now illogical and unnecessary to arbitrarily protect a small section of it now.
- (b) The presence of other trees means there is no intrinsic reason why Scots pine trees warrant special protection.
- (c) The need to protect the boundary of the cemetery is not disputed and not believed to be endangered by the proposed action of any party.

5.7 Mitigation of the above objections – Babergh District Council response:

- (a) The proposed TPO has been made in response to an unsubstantiated application to fell one of the trees within the group. The existing TPO at the site protects trees along an adjoining boundary, and was made in response to the residential development of the former Glebe Farm.
- (b) The Scots pine trees proposed for TPO stand adjacent to residential development and have been subject to previous applications for felling. This factor combined with their amenity value means they meet the legal guidelines for formal protection. Whilst other trees are present at the site, it is unlikely they will come under similar pressures due to their position within the cemetery.
- (c) The boundary of the cemetery only enjoys partial protection and it is now proposed to extend this coverage. Serving of the TPO has been prompted by an unsubstantiated application to fell one of the trees from the landowner. This presents an immediate risk to the tree.

It should also be noted that the TPO would not prevent any appropriate management works or additional planting from being undertaken. Rather it will prevent unnecessary felling and works likely to compromise the health and safety of the trees.

6. **HUMAN RIGHTS IMPLICATIONS**

- 6.1 The imposition of a Tree Preservation Order could interfere with the human rights of the property owner and also the interests of residents in the vicinity of the trees. Those human rights are particularly, but not exclusively:

Article 1 of the First Protocol (Protection of Property) – The right to peaceful enjoyment of possessions,

Article 8 – The right to respect for private and family life,

- 6.2 However, in such cases the human rights of the property owner and other individuals affected by the trees must be balanced against the rights of the public to expect the planning system to protect the trees when their amenity value justifies such protection.

6.3 In this instance, it is your officer's opinion that in this balancing act any interference with Article rights would be in accordance with the statutory provisions and guidance and would be justified as being necessary and proportionate in the wider public interest. Therefore, the protection of the trees should prevail.

7. **APPENDICES**

- (a) Copy of TPO BT 414
- (b) Copy of objection letter from Mr C Rockall 14 April 2009
- (c) Copy of application to fell tree and related correspondence

8. **BACKGROUND PAPERS REFERRED TO:**

None.

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