



Planning Committee

Date: 6th October 2021

**Subject: Objection to Tree Preservation Order Somerby No1 2021**

Report by:

Chief Executive

Contact Officer:

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Purpose / Summary:

This report relates to objections received against the making of a Tree Preservation Order which currently protects two woodland tree belts, to the westerly side of St Margaret's Church and alongside the road to the north of the church, Somerby.

**RECOMMENDATION(S):** That Members, notwithstanding the objections made by the owner and other village residents, approve the confirmation of the Tree Preservation Order Somerby No1 2021.

## IMPLICATIONS

**Legal: None**

**(N.B.) Where there are legal implications the report MUST be seen by the MO**

**Financial : FIN/91/22/SSc**

There are no financial implications arising from this report

**Staffing : None**

**(N.B.) Where there are staffing implications the report MUST have a HR Ref**

**Equality and Diversity including Human Rights :** The process for making and confirming Tree Preservation Orders is set out in primary legislation and government guidance. Therefore, if all decisions are made in accordance with those statutory requirements and guidance and are taken after having full regard to all the facts, no identified breach to the Human Rights Act 1998 should arise as a result of this report.

**Data Protection Implications : None**

**Climate Related Risks and Opportunities: None**

**Section 17 Crime and Disorder Considerations: None**

**Health Implications: None**

**Title and Location of any Background Papers used in the preparation of this report :**

PPG (Planning Practice Guidance) - <https://www.gov.uk/guidance/tree-preservation-orders-and-trees-in-conservation-areas> explaining the legislation governing the making of TPO's.

The Town & Country Planning Act, Part VIII, Chapter I, sections 197 & 198 – the duty to make provisions for protecting trees  
<http://www.legislation.gov.uk/ukpga/1990/8/part/VIII/chapter/I>

The NPPF and Planning Practice Guidance  
[National Planning Policy Framework - Guidance - GOV.UK \(www.gov.uk\)](http://www.gov.uk/government/uploads/system/uploads/attachment_data/file/426122/NPPF-Guidance.pdf)

**Risk Assessment : Not necessary**

**Call in and Urgency:**

**Is the decision one which Rule 14.7 of the Scrutiny Procedure Rules apply?**

i.e. is the report exempt from being called in due to urgency (in consultation with C&I chairman)

**Yes**

**No**

**Key Decision:**

A matter which affects two or more wards, or has significant financial implications

**Yes**

**No**

## 1 Introduction

1.1.1 Tree Preservation Order Somerby No1 2021 was made on 14<sup>th</sup> May 2021 to protect two small woodlands, one of which is adjacent St Margaret's Church, Somerby, and the 2<sup>nd</sup> is alongside the village access road to the north of the church. Being 'woodland' designations (W1 & W2), the TPO protects all trees and anything capable of growing into a tree, which includes tree saplings and small seedlings.

**SEE APPENDIX A**

1.2 The TPO was made following a concerned local resident contacting the council about trees being cut down and the loss of hedges, shrubs and plants in the woodland understorey during Feb/March 2021. Prior to the TPO being made, a site visit was carried out on 02/03/2021 to investigate reports of significant tree felling, during which, photographs were taken of various piles of recently felled tree stems and stumps. In particular, there was an extensive line of tree stems along the NE edge of tree belt W2. This was in addition to previous tree felling in 2019 which had also raised concerns at that time.

1.3 Correspondence was undertaken in March 2021 with the Forestry Commission's (FC) Woodland Officer regarding the tree felling. A felling licence had been issued by the FC, but their Woodland Officer had also received reports regarding the tree felling work, and he visited the site to see what had taken place. This raised his concerns about the amount of tree felling carried out, and that the limits of the felling licence had been exceeded. He explained he was waiting to see if any more work would be done before deciding whether to take enforcement action. Prior to the 2021 tree removals, the FC Woodland Officer had previously issued a 'stop notice' in October 2019 when unauthorised tree felling was occurring in these areas. The FC Woodland Officer was in full support of a TPO being made.

1.4 An email was received in June 2021 from the same village resident who originally brought the tree felling and ground clearances in 2019 and early 2021 to the Council's attention. The email points out further ground clearance and tree damage were taking place after the TPO had been made and served. However, other than 2 photos supplied with the email appearing to show one young tree snapped off and laying on the ground and an ash sapling or branch laying on the ground, we have no other evidence to support this claim.

1.5 Correspondence with the church warden, members of the Lincoln Diocese, and a business who manages Church land/properties, to clarify land ownership was inconclusive, as different people had different opinions on boundary position and whether or not Church owned trees had been affected. This resulted in a Land Registry check which clarified ownership boundaries at that time. It was realised that trees had also been cut down on land in the Diocese's ownership according to Land Registry records.

- 1.6 Objections to the making of the TPO have been received from the local owner of the land (excluding land owned by the Church), and two other village residents. Comments were also received from another village resident which appear to be an objection but he confirmed they are just comments. Correspondence was also received from a representative of the Church who was grateful to receive the TPO. **SEE APPENDIX B**
- 1.7 The trees contribute to the setting of the grade 2\* Listed Building, St Margaret's Church. The trees add feature and character along the public road which has the popular Viking Way footpath running along it between the two areas of woodland, and the area is designated an AGLV (Area of Great Landscape Value) of which these woodlands are an integral part. These woodlands and the immediately adjacent fields were once designated as SNCI's (Site of Nature Conservation Interest), but these no longer meet the criteria and were undesignated several years ago. W2 is a continuation of a woodland belt already protected by a TPO since 1981, with another tree belt up to Bigby TPO'd since 1968. **SEE APPENDIX C**

## **2 Discussion**

- 2.1 The submitted objections and comments generally contain the same points, and the main theme of the objections/comments are that the wooded areas had been neglected for many years and had become overgrown until the current owner bought them. The owner has spent time and money having a detailed survey carried out and a woodland management plan created. His intentions are to improve the woodlands and their wildlife value. The woodland survey points out the understorey is dense in areas, sycamore is taking over, and work is needed to improve woodland structure, public and highway safety, make space for new planting and natural regeneration. One objector says some falling down or rotten trees have been removed, but most have been left untouched. The owner says trees felled in the churchyard were either dangerous &/or diseased and were a significant danger to passing people. Another objector says the woodland management plan, which has not been supplied to or seen by the Council, is very strong on preservation and enhancement of wildlife habitats and it discusses how to improve habitats, creating a balanced overall structure, a sustainable shrub layer, and having a buffered edge, etc... The objections point out that work has been done to thin the woods, clear the edges bordering the road to take the woodland edge further back from the road, and that work has been done in accordance with the arborist's recommendations. They also say the TPO is inappropriate and unnecessary because of the presence of a woodland management plan. A TPO should only be made if it is expedient i.e. are the trees are under good management or not?
- 2.2 In response to these comments, the woodland areas have been virtually cleared of young trees and saplings, reducing the age diversity of the woods. I assume some replanting will take place if a woodland management plan is to be followed, as a programme of replanting

should provide the age diversity required for a healthy woodland structure. The objections say the woodlands are to have a sustainable shrub layer and have wildlife habitats preserved and enhanced, yet much of the understory has been cleared or flattened, to the detriment of the shrub layer and habitats, and is more significant than just thinning out or creating some clear areas for rides and glades. The roadside vegetation was dense like a hedge and comprised of a mix of species rich in biodiversity value, yet the work done has cleared all this away and moved the woodland edge further back from the road. I understand this vegetation grew into the road requiring regular cutting back, but the road verge is now comprised of lawn and post and rail fencing with very little else to provide biodiversity value or wildlife habitat. Some new planting of laurel has taken place along the top of a re-sculpted verge to the southeast of W2 in an area not included in the TPO. Laurel is non-native, low in biodiversity value, and is totally out of character for the area. It will grow large and bushy requiring cutting back from the road, and being evergreen it will cast shade over the road along its northerly side, which, in winter is likely to create a frost pocket with ice lingering on the road along the hedge's shadow. The steps through W1 up to the church have had various shrubs such as Photinia planted around the lower area of the woods. These are also non-native, out of character with the woodland and surrounding landscape, and have low biodiversity value. I find it hard to believe that a woodland management plan for restoring the woods and improving wildlife value would recommend any of these actions.

- 2.3 One objector describes how the woodland is important to the area but a TPO should not be made because tree felling is only permissible through a felling licence, and he believes a felling licence is only issued if a woodland management plan is agreed with the FC. He believes the woodland has been protected by a felling licence previously and will continue to be so, so he does not understand why a TPO has been considered necessary. I would like to clarify that a TPO does not replace the need for a felling licence, but is just an extra layer of tree protection. Ideally, the Council would like to leave woodland management in the hands of the FC, however, without a TPO in place the woodland owner could legally cut down 5 cubic meters of timber every 3 months, which could gradually eat away at the trees if carried out. Even with a TPO on the trees, any intended tree felling would still need to go through the felling licence application process, and a TPO would mean the Council would be consulted on any felling licence application. It would still be the FC who decides if the proposed felling is appropriate or not, and issue a felling licence. The TPO would protect the 5 cubic meters of trees that would otherwise be allowed to be felled every 3 months under the Forestry Act, and provide additional enforcement if needed. Recent years have already shown us that unauthorised tree felling (without a felling licence) was undertaken in 2019 until the FC issued a 'stop notice'. The FC's Woodland Officer informed me in March 2021 that the limits of a felling licence had been exceeded and he was on the verge of carrying out enforcement action. An additional email received in June 2021 detailing activities within the

woodlands after the TPO was made included alleged tree damage and knocking over some trees. From this information, I do not think we should rely on the rules of a felling licence being adhered to and to adequately protect the future of these trees without the added protection of a TPO

- 2.4 A woodland should ideally be a self-regenerating entity. Sycamore do prolifically seed and can become a dominant species, but a woodland management plan that includes control of sycamore regeneration would be looked upon favourably. Indiscriminate and mass ground clearance of woodland understory plants and shrubs, including regeneration of other tree species present, such as beech, oak, yew, is inappropriate and is one of the actions that a TPO should be able to restrict.
- 2.5 The submitted objections/comments also describe other work around the village saying the owner of the woodland has vastly improved the village. Work recently carried out involves upgrading the road, the addition of lay-bys, clearing roadside vegetation, re-sculpting verges, erecting post & rail fencing, adding CCTV along the road, installing new metal estate -style fencing, restoring the Listed monument, and carried out work to divert water running through the woodland and the village from an aquifer, as the water was a hazard in freezing weather. They hope the creation of a TPO will not dissuade the benefactor of the village from finishing the improvement works, and so consider the TPO should be removed.
- 2.6 The new TPO should protect the trees from any inappropriate tree work that is harmful to the future of the trees and the amenity they provide to the area. The TPO will have no bearing on any other, non-tree related works such as fencing, road or drainage improvements, building repairs etc... A woodland management plan covering 3, 5 or 10 years of management actions could be submitted with a tree application, and providing the proposed work is appropriate, has good reason, and would cause minimal harm to the amenity of the area, then the proposed work is likely to gain consent. Tree applications are not subject to a fee and take up to 8 weeks to process.

### **3 Conclusion**

- 3.1 The two wooded areas are significant features within the village and surrounding area, and provide sylvan character and amenity within the locality. Unauthorised tree felling and ground clearance took place during 2019 and 2021 prompting an amenity assessment for a TPO. Protecting these trees should prevent any inappropriate tree work, but should not be an obstacle to good management and appropriate tree works. A TPO should have no bearing on other works around the village providing they have no negative impact on the protected trees. The confirmation of this order is the only way to ensure the future of the

two wooded areas, and the amenity they provide is not diminished by unnecessary tree removal.