

**Bodicote House, White Post Road, Bodicote,  
Banbury, OX15 4AA**

**Case Officer:** Iain Osenton

**Applicant:** CDC Arboricultural service.

**Proposal:** TPO 21/2024 – confirmation following objection received by CDC Properties team

**Ward:** Adderbury, Bloxham and Bodicote

**Councillors:** Councillors Gordon Blakeway, Robert Pattenden and David Hingley.

**Reason for Referral:** Application affects Council's own land. The TPO is served on council owned land. One objection has been received, from Cherwell District Council. Legal guidance advises per CDC constitution, referral to planning committee is required.

**Expiry Date:** 2 December 2024

**Committee Date:** 16 January 2025

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**SUMMARY RECOMMENDATION: Confirm Tree Preservation Order.**

**MAIN REPORT**

**1. APPLICATION SITE AND LOCALITY**

- 1.1. The application site is Bodicote House, Bodicote. The site contains numerous trees of high amenity and arboricultural significance visible both internally, and externally to the site. The site is subject to future planning applications, with concerns raised by residents for trees within, and bordering the site.

**2. CONSTRAINTS**

- 2.1. There is currently a preliminary Tree Preservation Order ("TPO") on site reference 21/2024.

**3. DESCRIPTION OF PROPOSED DEVELOPMENT**

- 3.1. The TPO in question seeks to protect trees of suitable amenity, and arboricultural merit within the site. The trees have been subject to a TEMPO (Tree Evaluation Method for Preservation Orders) assessment, with qualifying trees included within the order. The TPO is made to ensure trees receive due consideration for future re-development of the site but would not obstruct re-development providing correct process is followed.

**4. RELEVANT PLANNING HISTORY**

None relevant

**5. PRE-APPLICATION DISCUSSIONS**

- 5.1. No pre-application discussions have taken place with regard to this proposal.

## **6. RESPONSE TO PUBLICITY**

6.1. The site owner was notified of the TPO being served on 29<sup>th</sup> August 2024.

## **7. RESPONSE TO CONSULTATION**

7.1. Below is a summary of the consultation responses received at the time of writing this report. Responses are available to view in full on the Council's website, via the online Planning Register.

7.2. Cherwell District Council Assistant Director of Property **objects** on the grounds of the way in which the order was served, citing the order being only served electronically, contrary to both the Town and Country Planning Act 1990 and Town and Country Planning (Tree Preservation) (England) Regulations 2012. The objection further highlights the plan served with the TPO documentation as being incorrectly scaled, making interpretation of the plan and protected trees difficult. The objection further objects to the amenity value afforded to the trees, but also contends the actual scores cannot be challenged as the plan does not allow for accurate identification of each tree protected. The objection suggests the expediency assessment of 'foreseeable threat to tree' to be incorrect, citing the council has met with the proposed buyer of the site, who has produced plans clearly showing a minority of trees impacted by redevelopment proposals.

## **8. RELEVANT PLANNING POLICY AND GUIDANCE**

8.1. Planning law requires that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise.

8.2. The Cherwell Local Plan 2011-2031 - Part 1 was formally adopted by Cherwell District Council on 20th July 2015 and provides the strategic planning policy framework for the District to 2031. The Local Plan 2011-2031 – Part 1 replaced a number of the 'saved' policies of the adopted Cherwell Local Plan 1996 though many of its policies are retained and remain part of the development plan. The relevant planning policies of Cherwell District's statutory Development Plan are set out below:

### CHERWELL LOCAL PLAN 2011-2031 PART 1 (CLP 2015)

- ESD15 - The Character of the Built and Historic Environment

### CHERWELL LOCAL PLAN 1996 SAVED POLICIES (CLP 1996)

- C28 – Layout, design and external appearance of new development

8.3. Other Material Planning Considerations

- National Planning Policy Framework (NPPF)
- Planning Practice Guidance (PPG)
- The Planning (Listed Buildings and Conservation Areas) Act 1990
- EU Habitats Directive
- Natural Environment and Rural Communities Act 2006
- Conservation of Habitats and Species Regulations 2017
- Circular 06/2005 (Biodiversity and Geological Conservation)

## **9. APPRAISAL**

9.1. The key issues for consideration in this case are:

- The serving of the TPO.
- The map served with the TPO.
- The amenity value score of the trees.
- The expediency of the TPO.

#### The serving of the TPO

9.2. The TPO was served both electronically and in hard copy form via the internal CDC property post pigeon hole. The TPO has therefore been served correctly in line with governing legislation, and this has been confirmed with CDC's law and governance team.

#### The map served with the TPO

9.3. The arboricultural officers note the suggested discrepancies. The TPO plan can easily be amended upon confirmation of the Order, without the need to officially 'vary' the order. However, should it be found a discrepancy is present with an individual tree, the order can be amended to address this discrepancy, without removing protection for all other trees within the site.

9.4. Having reviewed the matter in detail, the arboricultural officers confirm that both T15 and T2 are have been correctly identified.

9.5. In any case, The Town and Country Planning (Tree Preservation) (England) Regulations 2012, regulation 3 point 4 states '*In the case of any discrepancy between the map contained in, or annexed to, an order and the specification contained in the Schedule to that order, the map shall prevail*'.

9.6. In relation to group G1, it should be noted that the presentation of G1 with a dotted line complies with government legislation for TPOs.

9.7. In relation to surveys supporting prospective development of the site, whereas an all-site survey seeks to capture all trees within the site, the TPO survey seeks only to capture those warranting of preservation. Therefore, the exact boundary, species mix and count of a group may vary between maps. This on its own does not demonstrate an error within the TPO map.

#### The amenity value score of the trees

9.8. It is acknowledged the plans scale creates difficulties interpreting some parts of the plan. However, the majority of the trees are visible on the plan; therefore, a challenge to the given TEMPO score could have been made.

9.9. Amenity score is not a component to a TEMPO assessment. Amenity is not defined in law. However, for the purpose of a TPO, a tree may be considered of sufficient amenity if its damage, or removal would be considered to hold a negative impact on the local environment (Department for Levelling Up, Housing and Communities, 2014). However, in order to capture amenity, a council must have a defensible scoring system.

9.10. For this TPO, a TEMPO assessment scoring the trees condition, retention span, relative public visibility, additional factors (veteran status, groups, or historical trees etc.) and TPO expediency was provided within the schedule. No challenge was made to the given scores.

9.11. The TPO was initiated following receipt of a public enquiry, expressing concerns for trees within the site, should the site be sold. Trees are visible from the publicly accessible areas of the site, and externally to the site, with the majority of trees included predating the sites use as a council office. By comparison to the definition of amenity, it is reasonable to suggest removal or damage to these trees would be detrimental. In addition, many of the trees provide enhancement to the visual amenity of the locality, to the character and appearance of the Conservation Area and to the significance of the listed building Bodicote House. Overall, therefore, their amenity is worth preserving, as evidenced by the TEMPO assessments.

#### The expediency of the TPO

9.12. The TEMPO guidance includes the receipt of an outline planning proposal as an example of when a 'foreseeable' threat score should be used.

9.13. The next lowest threat under TEMPO assessment is 'perceived threat to tree' which under TEMPO guidance is to be used, as an example, where a qualifying tree is situated in an infill plot, or in an area of potential development. That the site has been confirmed as being subject to future development justifies the given TEMPO score.

9.14. Thus, the amenity score is defensible, and the expediency score is correct.

#### *Conclusion*

9.15. The above points highlight that the TPO was served correctly. It is acknowledged areas of the given TPO map are difficult to interpret, but there are avenues whereby this can be corrected upon confirmation of the order, without official 'variation' of the order. Even if a variation is required, this does not automatically warrant the removal of protection for all trees within the site.

9.16. It should be noted that the protection of trees in no way interferes with any proposal to develop the site. Planning permission would supersede a TPO. Whilst CDC Arboriculture, as statutory consultees to any development within the site, will have opportunity to comment on tree removal/retention plans with comments given in line with BS5837:2012 and local/national policy, what the TPO achieves is an assurance that all trees will be considered as a constraint to the development proposal, as amenity assets to the village bearing historical relevance to the site.

9.17. If it is later judged acceptable for a TPO tree to be felled, a replacement can be secured. Whereas any trees not served by a TPO will not be a constraint to the development proposal and replacement cannot be secured.

9.18. It is recommended the TPO be confirmed. On confirmation of the order, the TPO is to attach a clearer map aiding identification.

## **10. RECOMMENDATION**

**CONFIRM THE TREE PRESERVATION ORDER**

CASE OFFICER: Iain Osenton