

PRINCIPAL ITEM NO. 11

TOWN: WARWICK

APPLICATION NO. TPO 251

CASE OFFICER : MR. D. EDMONDS

**LAND REAR OF DONGAN ROAD & ADJACENT TO PRIORY PARK, WARWICK**

Provisional Tree Preservation Order: 20 metre wide woodland strip adjacent to footpath

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**THE SITE AND ITS LOCATION**

The provisional Tree Preservation Order (TPO) site is a 20 metre wide strip within a broadly triangular piece of land of approximately 0.32 hectares that separates the Cape Road Industrial Estate to the north west from Priory Park to the south east and the residential development of Spring Pool to the west. A public footpath, in active use, runs along the south east boundary of the triangular site and forms a physically well defined south east boundary to the provisional TPO site. The west and northern boundaries of the strip also form a well defined boundary relating to the County Council car park and the car park to the latest part of the Cape Road Industrial Units, respectively. The north western boundary is undefined by anything on the ground, but it encompasses various groups of trees identified in an arboricultural report prepared by Capability Landscapes on behalf of Fortress Wastecare, as part of the supporting information for the refused application for planning permission for the proposed erection of a building for storage that was recently dismissed on appeal.

**BACKGROUND INFORMATION**

- **Mar 2000:** Confirmation of two TPO's no. 219 & 220 relating to three specimen oak trees within the strip
- **2000/01:** Application for planning permission for Change of Use of triangular site for land for open storage refused on 23<sup>rd</sup> January 2001 for reasons relating to character & appearance of area and living conditions of neighbouring residential areas. Appeal dismissed in July 2001 because of the unacceptable effect on character of the area and loss of valuable open space that is worthy of protection –
- **Nov. 01:** Enforcement investigation (Ref. ENF.326/48/01) into clearance and levelling of some of the triangular land. The case was closed with conclusion that it did not amount to a breach of planning control, the destroyed trees not being protected.
- **Dec.02:** Refusal of planning permission for erection of a building for storage and construction of parking area (amended scheme). The application included proposals for most of the naturally regenerating areas within the strip and other areas within the site to be reinforced by new planting. The subsequent appeal was dismissed following a public inquiry in July 2003 because of the unacceptable effect on the character of Priory Park
- **Aug 03:** Enforcement investigation into the felling of trees within triangular site with conclusion that this provisional TPO was necessary to protect the woodland strip.

The TPO took effect, on a provisional basis on 22<sup>nd</sup> August 2003 and continues in force on this basis for a further six months or until the Order is confirmed by the Council whichever first occurs.

### **OBJECTIONS TO THE TPO**

Before the Council can decide whether the Order should be confirmed interested parties and the public in general had a right to make representations. In this case a number of representations have been made on behalf of the company that owns the land, Fortress Wastecare (Spa) Ltd. The main technical representations made by their planning consultant's RPS and the response of the Council's Strategy Officer (Arboriculture) are produced as an appendix to this report.

The main points raised include:

- It would block effective use of the site rather than protect trees
- There is no significant tree cover on the site described as 'woodland' and the majority of the site is grassland with alien species such as sycamore.
- The central part of the triangular site was cleared of self seeded trees, shrub and understorey vegetation and levels were changed in 2002 to within ten metres of the line of mature trees fronting the footpath.
- The triangular site has been used as a general tip as the remainder of the Cape Road Industrial Estate was developed.
- The woodland TPO was made without proper investigation and detailed site visit.
- Woodland TPO sites require clear physical boundaries and there is no physical distinction between the area defined as woodland and the rest of the triangular site.
- Woodland TPO's should be used as a last resort and the LPA should first encourage the owner to bring the woodland into proper management under a grant scheme run by the Forestry Commission.
- The Forestry Commission has advised that the subject area does not constitute 'woodland'.
- The making of the original TPO's in 2000 that was restricted to 3 specimen Turkey Oaks is indicative that the rest of the trees on the site were not worthy of protection and there has been no change in material circumstances to review this stance.
- The removal of unprotected trees has not materially affected the individual landscape characteristics of the site
- The amenity of Priory Park and the adjacent public footpath can be appropriately protected by individual or group TPO's.

### **LETTERS OF SUPPORT FOR THE TPO**

#### **Warwick Town Council:**

The Council's planning committee strongly support the order.

#### **The public**

A petition signed by 417 individuals support the Council's TPO on the woodland strip adjacent to Priory Park footpath so that trees may be allowed to re-grow.

Three individual letters of support were received with the main points raised being:

- The site needs to be protected to allow it to re-grow preventing any further clearance or uprooting of trees to protect the character and setting of the adjoining historic park
- It would be of benefit to extend the TPO to include the area adjoining Spring Pool houses

- The trees that were felled indiscriminately by Fortress Wastecare caused outrage amongst many local residents in an area rightly identified by two planning inspectors as part of a valued amenity to the people of Warwick.
- The felling was done to destroy the valued amenity to try to ensure that the next planning application by Fortress would be successful.
- The adjoining footpath is well used and constitutes an enjoyable walk through natural woodland
- The woodland strip acts as an effective buffer to screen the industrial estate.

### **Forestry Commission:**

Since the owners of the land have asserted that the Forestry Commission support their points, notwithstanding that they have no remit over woodland TPO's, the Council sought confirmation of their position. They state: *'the Woodland TPO would appear to be the most practical way of safeguarding strips or belts of woodland where you have a mixture of mature, semi mature trees growing with understorey coppice or shrubs like Elderberry as seen on the site. Also this would protect any natural regeneration or root suckers such as Elm which could develop in the future'. The Woodland TPO also gives greater protection to what we call unmeasurable e.g trees less than 8 cms in diameter, coppice less than 15 cms diameter or thinnings of less than 10cms diameter measured at 1.3 metres from the ground, which fall outside the protection of the Forestry Act 1967'.*

They confirm that they do not generally involve themselves in such matters and have no prior knowledge of the history of the site as asserted by the owners. They say that many of the felled trees have healthy stumps which should regenerate further and that elms are likely to sucker.

### **CONCLUSION:**

Given the semi-natural nature of the site, the use of individual or group designations on a TPO on this site would not adequately protect it. The understorey and regeneration contribute significantly to the amenity afforded by the site and to the potential of the site to afford amenity in the future. Only a woodland designation can adequately protect this. The alternative would be to use group and individual orders, combined with annual reviews and variation with the associated resource implications. Individual and group designations would have been difficult to use in the context of the site to protect the complex range of trees in this semi-natural habitat. The site had, and to an extent still has, a diversity of structure characteristic of woodland, a feature that was the subject of positive comments by two government inspectors. The woodland strip relates well with an area of woodland within Priory Park. Furthermore, a woodland designation covers natural regeneration and coppice regrowth from the stumps of those trees whose removal led to the making of the TPO.

The survey undertaken by the owner's arboricultural consultants in March 2002 was focused on the larger trees and not the amenity value of all the vegetation as a group. The fact that it fails to mention the understorey is not an indication of the fact that it did not exist. The site was the subject of a detailed assessment by Council officials during the spring of 2003 as part of the preparation for the public inquiry in July 2003. It was noted that within the appeal site there is a wooded edge dominated by turkey oak, ash and sycamore, a ground layer of predominantly nettle, bramble and cow parsley, with a shrub layer/under storey of elm and beech regeneration and elder.

These recent detailed assessments made it unnecessary to venture into the middle of the site to undertake a further assessment of the need for a woodland TPO, in august 2003, particularly as extensive felling was being undertaken, requiring expeditious

action. There is no corroboration in the planning history of the site for any significant tipping as the owner asserts, and little or no evidence on the ground.

The regenerating sycamores, that the owners malign, can make a fine and attractive tree, is near naturalised, supports a considerable diversity of fauna and is a useful timber tree.. The regenerating elm formed a significant part of the understorey and, not withstanding Dutch Elm disease, successive regenerations would continue to contribute to the understorey of the woodland. The council would not dispute that the are would benefit from sensitive management. However, clear felling most of it does not constitute sensitive management.

Regarding the size and boundaries of the woodland TPO, they are defined on three sides by property boundaries. On the remaining side, it is defined as a line between two points, following a fixed distance from a property boundary. It is accepted that this does not strictly adhere to the guidance in "Tree Preservation Orders: A guide to the law and good practice". However, this is guidance, not legislation, and the purpose of this particular guideline is to ensure, where possible, that ambiguity about the extent of the TPO is avoided. Given the particular site characteristics, the boundaries of the TPO were defined in such a way as to minimise any ambiguity. They sought to adhere as closely as possible to the letter of the guidance and to adhere completely with reasoning behind that guidance.

Regarding the alleged lack of liaison with the Forestry Commission, the TPO was made in an emergency in the minimum time possible in response to extensive felling taking place. No discussion took place with Fortress about managing the area because they began felling trees without consultation or any apparent concept of good management and a rapid response from the Council was necessary. In such a situation, prior liaison with the Forestry Commission was not practical. Liaison took place as soon as possible afterwards and a summary of the responses are produced above.

Whilst there may not have been a material change in the site in the last three years, there has been a change in the Council's attitude to assessing amenity, a change that results from the council's continuous efforts to refine and improve its services. The council now makes greater recognition of the amenity afforded by groups of trees as groups, where in the past there may have been a tendency of focusing too closely on individual specimens.

There are two options to address the concerns of the owner about the relative absence of the trees and understorey shrubs in the central part of the triangular site. The TPO could be confirmed in an amended form to form a horse shoe shape leaving a more narrow central strip of say 10 metres. However, this would be equally difficult to define with any physical features and would lead to ambiguity about the extent of the designation. The alternative and recommended option is to confirm the order as made to avoid such ambiguity. It would not sterilise the land to future development as asserted by the owners since any planning permission for any development that overlaps the defined strip within the central part of the site, subject to conditions, would override the protection offered by the TPO. In relation to any possible future planning applications that may be made on this site, the Inspectorate decisions dismissing appeals against proposals involving open storage or built development would be a very material consideration in assessing their merits.

### **RECOMMENDATION**

That Provisional TPO 251 be confirmed without modification.

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