

# 22/00181/TORDER

**Objector** Mather Jamie

**Location** Land East of Hickling Road, Hickling

**Objection** To Hickling No.1 Tree Preservation Order 2022

**Ward** Neville and Langar

## THE SITE AND SURROUNDINGS

1. The trees form a narrow belt, approximately 10 metres wide, which run along the roadside frontage of a field to the east of Hickling Road to the immediate north of Hickling village. The site is bordered by a bungalow to the south and a Hawthorn hedge separates the trees from the roadside verge. The land is owned by Sherwood Farms.
2. The trees are early-mature, mixed species including Ash, Oak, Alder, Poplar and are estimated to be around 25 years old.

## DETAILS OF THE TREE PRESERVATION ORDER

3. The Tree Preservation Order (TPO) was made following a planning application, reference: 22/01591/FUL, to construct a timber-framed, single storey building to house egg vending machine(s), creation of an access, and car parking for up to 4 No. vehicles. The TPO uses the 'group' classification where the individual category would not be appropriate and the group's overall impact and quality merits protection.
4. The TPO was made on the 10<sup>th</sup> November 2022. Under the Town and Country Planning (Tree Preservation) (England) Regulations 2012 the Order takes effect provisionally and needs to be confirmed within 6 months of the date it was made. The Council has a duty to consider all objections and representations that have been made before deciding whether or not to confirm the Order.

## SITE HISTORY

5. The above planning application was refused due to concerns the design, location and use was neither justified or proportional, the development would result in ribbon development into the countryside and would erode and harm the rural characteristics and intrinsic beauty of this open countryside location. Also, the loss of part of a group of protected trees that make a significant contribution to the rural amenities and character of the area.
6. An Arboricultural report accompanied the application which assessed the quality of the trees with a view to developing the site. Unfortunately, the

application did little with the information presented in the arboricultural report, trees to be removed and retained where not shown on the layout plan, nor the trees' root protection areas. The report did specify that 11 trees would need to be felled and suggested that there was 'ample opportunity for the implementation of new planting in mitigation for the proposed tree removal', but again the application did not demonstrate any meaningful replacement planting that would mitigate the loss of trees.

## REPRESENTATIONS

### Local Residents and the General Public

7. An objection has been received by Mather Jamie acting as agents for the landowner for the following reasons.
  - The TPO is 'a retaliatory strike to those wishing to bar sustainable development and employment in the countryside.'
  - Attached to the objection was an arboricultural survey which accompanied the planning application. The objection highlights comments from the survey in relation to each of the trees. The tree identification numbers referred to below relate to the tree survey and not the TPO.

ID	Tree	Comment
T1	Oak	
T2	Alder	Little quality
T4	Alder	Indifferent quality & potential
T5	Alder	Indifferent quality & potential
T10	Alder	Indifferent quality & potential
T11	Ash	Ash dieback present, unlikely to survive
T14	Ash	Early signs of ash dieback & unlikely to survive
T16	Ash	Early signs of ash dieback & unlikely to survive
T18	Ash	Early signs of ash dieback & unlikely to survive
T19	Ash	Early signs of ash dieback & unlikely to survive
T21	Ash	Early signs of ash dieback & unlikely to survive
T20	Birch	Low value
T23	Poplar	Typical species & therefore not valuable
T24	Poplar	Typical species & therefore not valuable

- As 6 of the protected Ash trees are likely to die from Ash dieback disease, they should be dismissed from the TPO as they will need to be removed to assist in the reduction and spread of the disease and on public safety grounds.
- Under the Tree Preservation Orders: A Guide to the Law and Good Practice document, individual or groups of trees should be protected for trees "whose overall impact and quality merit protection", given the above summary from the Symbiosis report, the objector does not agree that these trees fall under this category.
- Regarding the amenity value of the trees, the objector is of the opinion that they have little to no value. Given they have been planted relatively recently and are not part of a much larger wooded or forested landscape, they provide little benefit to the enjoyment of a space. The trees were planted by

the landowner approximately 15-20 years ago in area of poor agricultural land and not for amenity enhancement.

- In light of the above, the TPO should be dismissed. However, after careful consideration the landowner would be happy to accept a TPO on the single oak tree identified being the one tree of value, subject to being provided with a justification of why you are of the opinion that this tree is worthy of protection.

## **APPRAISAL**

8. The Council protected the trees ahead of the refusal of planning permission as the trees were not protected in any way and could have been felled at any time. The TPO will ensure the retention of the trees whilst the future of the site remains somewhat uncertain, for example the applicant could appeal the Council's planning decision. The TPO will give the Council greater opportunities to ensure replacement trees are planted should any need to be removed. The TPO is selective, protecting the better-quality trees in the group and also confines itself to the application site and not the entire belt of trees which runs further to the north along the edge of the field.
9. The accuracy of the comments attributed to the survey in the objection is questioned. For example, the report highlights in relation to the group of Alders that the "edge trees are the larger and better specimens (T2, T4 & T5) and would succeed as stand-alone specimens whilst the internal ones are of indifferent quality and potential." As a result, the Council only protected 4 out of the 9 Alders including T2, T4 and T5. Not all the Ash are currently showing signs of Ash dieback and the TPO did not protect Ash where the disease was more advanced. Of the individual Ash trees on the site the Council protected 6 out of 8. The Arboricultural report suggest T11 has 'early signs of disease, but currently reasonable', but it does note that it is unlikely to survive. No note of the disease is made in relation to T14 and T16. T18 has early signs and T19 is currently healthy. The report notes in relation to the Lombardy Poplars on the site that they are in mixed condition, with the two largest trees on the edge of the field (T23 & T24) being in good overall condition, these were the 2 Poplars the Council chose to protect. The other tree the Council protected is a Silver Birch and whilst the arboricultural report notes it is of low value due to poor form due to an asymmetry over the farmland, it is considered that this is a minor issue given the informal nature of the belt of trees.
10. The arboricultural report was available to the Council when it made the TPO and where possible the best quality trees were protected. Whilst the quality of the individual trees is variable this doesn't lessen the amenity value of the group as a whole. The Arboricultural Report looks at the trees with a view to developing the site and in accordance with best practice categorises the trees in 4 bands. Category A, trees of high quality. Category B, trees of moderate quality. Category C, trees of low quality and U, trees which cannot realistically be retained. Of the protected trees, 7 are category B and 7 category C. The Council did not protect 6 other category C trees, 4 category U trees and 2 groups of category U trees. Of the 11 trees which were required to be felled to implement the planning application, 4 were category B, 5 category C and 2 category U.

11. Scenarios predict that more than 95% of all Ash will be killed by the disease. There is no need to pre-emptively fell Ash to control the spread of the disease as it is now present across the country and there is the hope of finding trees with some genetic tolerance. Officers considered whether or not Ash should be protected given the increasing prevalence of the disease and concluded that protecting the Ash in the current circumstances was appropriate for the following reasons. The first part of the disease is increasing die back in the canopy and as the removal of deadwood is exempt this could take place without the need to make a formal TPO application. There is also an exemption relating to 'dead or dangerous' trees and it is felt that this would again allow dying trees to be felled where the disease is clearly evident without the need to make a formal application subject to prior discussion with Council officers. The advantage of the TPO is that it would place the landowner under a duty to plant replacements for any trees removed under the dead or dangerous exemption and such proactive management would enhance the value of the group as a whole.
12. Whilst the group TPO tried to be selective and protect the best quality trees, it is recognised that individually some of the trees are lower quality specimens, hence the group classification which considers the overall quality and value of the trees. TPO's are used to protect trees where it is 'expedient in the interest of amenity'. Amenity is not defined in law, but Government advice is that TPO's should be used to 'protect selected trees and woodlands if their removal would have a significant negative impact on the local environment and its enjoyment by the public' and that 'the trees, or at least part of them, should normally be visible from a public place'. In this case the trees form a pleasant belt in a prominent location alongside the road running north out of the village. The reasons for planting the trees are not relevant to the assessment of amenity and it is the fact the trees are located in a prominent location on the edge of the village which makes them important. Given their young age, the amenity value of the trees should increase with time as they mature.
13. The Council has the option to modify the TPO when it is confirmed and it could be possible to protect less trees than the original TPO specifies. However, it should be born in mind that the value of the trees is as a linear roadside group and protecting a single Oak tree would mean that there is a risk that other trees could be removed and not replaced. Protecting the single Oak would mean that 6 other category B trees would not be protected.

## **RECOMMENDATION**

It is RECOMMENDED that Hickling No.1 Tree Preservation Order 2022 be confirmed without modification.