



## Development Control Committee Schedule 17/10/2023

<b>Item No:</b>	<b>03</b>
<b>Application No.</b>	S.23/1902/NEWTPO
<b>Site Address</b>	Land At, Middle Hill, Eastcombe, Stroud
<b>Town/Parish</b>	Bisley With Lypiatt Parish Council
<b>Grid Reference</b>	389411,203878
<b>Application Type</b>	New Tree Preservation Order
<b>Proposal</b>	New TPO/0589 - Land At Middle Hill, Eastcombe, Gloucestershire
<b>Recommendation</b>	Confirm the Tree Preservation Order without modification
<b>Call in Request</b>	Requested by Head of Development Management





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<b>Applicant's Details</b>	Stroud District Council Ebley Mill, Ebley Wharf, Stroud, Gloucestershire, GL5 4UB
<b>Agent's Details</b>	None
<b>Case Officer</b>	Justin Hobbs
	<b>CONSULTEES</b>
<b>Comments Received</b>	Woodside Lodge
<b>Constraints</b>	Bisley With Lypiatt Parish Council
	<b>OFFICER'S REPORT</b>

### CONFIRMATION OF TREE PRESERVATION ORDER

#### PURPOSE OF REPORT

To consider objection and support comments made to the making of Stroud District Tree Preservation Order No 0589 in respect of a woodland at Land at Middle Hill, Eastcombe and to determine whether or not to confirm the Order.

An effective tree preservation order makes it an offence to do any works to the protected trees without first gaining consent from the Local Planning Authority unless such works are covered by an exemption within the Town and Country Planning (Tree Preservation) (England) Regulations 2012.

#### INTRODUCTION

In November 2022 Bisley-with-Lypiatt Parish Council requested that the council consider the expediency of making a TPO on a small woodland on land at Middle Hill, Eastcombe. The site was for sale and the Parish Council were concerned about the future of the woodland.

#### DESCRIPTION OF TREE/SITE

Land at Middle Hill covers approximately 1.4 acres. Located on the boundary with Chalford Parish, the wedged shaped site is overwhelmingly young deciduous woodland. The site is bounded by the road known as Middle Hill to the west and a road to the east that leads towards Bisley.

#### NATIONAL AND LOCAL PLANNING POLICIES

National Planning Policy Framework September 2023

Available to view at:

<http://www.communities.gov.uk/documents/planningandbuilding/pdf/2116950.pdf>

Stroud District Local Plan.

Policies together with the preamble text and associated supplementary planning documents are available to view on the Councils website: <https://www.stroud.gov.uk/LocalPlan>

Local Plan policies considered include:

ES8 - Trees, hedgerows and woodlands.

Bisley-with-Lypiatt Design Statement (2010)

National Planning Policy Guidance (NPPG).



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### RELEVANT PLANNING HISTORY

TPO/0582 - TPO made 09.01.2023 to protect the woodland. Due to some minor errors on the TPO schedule it was decided to allow this TPO to lapse (not be confirmed) and the current TPO (TPO/0589) was made to, in effect, replace this TPO.

### LEGISLATION BACKGROUND/TPO PROCEDURE

A Tree Preservation Order (TPO) is an order made by a Local Planning Authority that makes it an offence to fell, prune, uproot, wilfully damage or destroy a tree without the Authority's permission. The Authority has a statutory obligation to protect trees worthy of preservation by means of TPOs.

The power to make a Tree Preservation Order (TPO) is contained in The Town and Country (Tree Preservation) (England) Regulations 2012. This specifies that local planning authorities can make a Tree Preservation Order if it appears to them to be 'expedient in the interests of amenity to make provision for the preservation of trees or woodlands in their area'.

Authorities can either initiate this process themselves or in response to a request made by any other party. When deciding whether a TPO is appropriate, authorities are advised to take into consideration what 'amenity' means in practice, what to take into account when assessing amenity value, what 'expedient' means in practice, what trees can be protected and how they can be identified.

When deciding whether a TPO is appropriate, the guidance outlines that protection should be given to trees and woodlands if their removal would have a significant negative impact on the local environment and its enjoyment by the public. Before authorities make or confirm an TPO they should be able to show that protection would bring a reasonable degree of public benefit in the present or future.

When considering whether trees should be protected by a TPO, authorities are advised to develop ways of assessing the amenity value of trees in a structured and consistent way, taking into account the following criteria:

#### Visibility

The extent to which the trees or woodlands can be seen by the public will inform the authority's assessment of whether the impact on the local environment is significant. The trees, or at least part of them, should normally be visible from a public place, such as a road or footpath, or accessible by the public.

#### Individual, collective and wider impact

Public visibility alone will not be sufficient to warrant a TPO. The authority is advised to also assess the particular importance of an individual tree, of groups of trees or of woodlands by reference to its or their characteristics including:

- \* size and form;
- \* future potential as an amenity;
- \* rarity, cultural or historic value;
- \* contribution to, and relationship with, the landscape; and
- \* contribution to the character or appearance of a conservation area.



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### Other factors

Where relevant to an assessment of the amenity value of trees or woodlands, authorities may consider taking into account other factors, such as importance to nature conservation or response to climate change. These factors alone would not warrant making an Order.

Stroud District Council uses a national recognised system to assess the expediency of making a TPO called Tree Evaluation Method for Tree Preservation Orders (TEMPO). TEMPO is used by many local authorities for this purpose.

Once a TPO is made, the council has a maximum of 6 months to decide whether to confirm the TPO as made, confirm the TPO as made but with modifications, or to not confirm the TPO. Allowing the 6 month period to pass without confirmation renders the TPO as lapsed and the trees are no longer protected.

The purpose of the maximum period of 6 months between making the TPO and confirming, modifying, or not confirming the TPO, is to allow a for representations to be made to the council about the TPO before deciding whether to confirm, modify, or to not confirm the TPO.

### **BACKGROUND TO THE TPO**

In November 2022 the Parish Council made officers at Stroud District Council aware that the site known as land at Middle Hill, Eastcombe was for sale. The Parish Council being concerned about potential future land use changes requested the council consider making a TPO to protect the young woodland covering the vast majority of the site.

The consultant tree officer visited site on 10.11.2022 and undertook an assessment for expediency to make a TPO using the TEMPO system. The results of the assessment indicated it was expedient to make a TPO to protect the woodland (Copy in the Appendix).

TPO 0582 was duly made on 09.01.2023. The council served notice on the owner and those affected by the TPO in accordance with Regulation 5 of the Town and Country Planning (Tree Preservation) (England) Regulations 2012 (The Regulations hereafter). A site notice was also posted on site.

An objection to the making of this TPO was received within the statutory 28 day period following the making of the TPO. Officers considered the objection and decided that the woodland protected by this TPO had not been identified correctly on the TPO plan.

It was decided that the most expedient course of action was allow TPO 0582 to lapse (i.e to not be confirmed) and to make a new TPO to, in effect, replace TPO 0582.

TPO 0589 Land at Middle Hill, Eastcombe, Gloucestershire was duly made on 26.07.2023. The council served notice on the owner and those affected by the TPO in accordance with Regulation 5 of the Town and Country Planning (Tree Preservation) (England) Regulations 2012. A site notice was also posted on site.

The TPO protects a small woodland area identified as W1 on the TPO schedule and plan. The TPO protects all trees within the area that are growing now, and any new trees / saplings that grow in the future (Copy of Order is attached in the Appendix).



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The period for any objections and representations to be made to the Council in respect of the TPO ended on 23.08.2023.

### REPRESENTATIONS

One supporting letter.

Summary of support comments received:

"We wholeheartedly agree that the trees in the woodland are worthy of such an order by virtue of their public amenity value and their value as a natural habitat....We agree with the Council's opinion that were the woodland to be affected by future development or changes to its' land use consideration of the amenity value of the trees and the surrounding area should be paramount"

One objection letter from agents representing the site owners.

Summary of objection comments received:

"Firstly the Order is invalid. Secondly, the Order fails to meet the requirements of section 198(1) of the Town & Country Planning Act 1990 in that it is not expedient in the interests of amenity to make provision for the preservation of any of the tree at the Application site"

The objection contends the following:

1. The map annexed to the TPO is invalid. The Regulation "requires a map annexed to an order to give a clear indication of the position of the trees, groups of trees or woodlands to which the order relates. In contradiction of this, the map annexed to the Order fails to give a clear indication of the position of the woodland to which it relates, instead outlining the whole of the Registered Title (including approximately 500m<sup>2</sup> of land where no trees are present)"
2. The council has not made the TPO publicly available so that "The failure to publish the Order as soon as practicable has prejudiced our clients' (and others') ability to make proper representations in relation to the Order".
3. The Notice accompanying the TPO is in conflict with the requirements of the Regulations. " The accompanying notice...gives broad and vague reasons for serving the Order, none of which bear any specific relevance to the Application site. It is, therefore, submitted that the Notice lack sufficient information to enable members of the public a fair opportunity to rebut reasoning in favour of the Order. This is in direct conflict with the requirement of Regulation 5(2)(a)".
4. The objection offers that the amenity value of the woodland is not significant "The removal of the trees (although not currently proposed) would not have a significant negative impact on the local environment nor the public's limited ability to enjoy it. The Application Site does not provide any reasonable degree of public or ecological benefits, either now or in the future".
5. The objection considers it is not expedient to confirm the order - " There is no risk of the trees at the Application Site being felled or damaged in ways which would have any impact on the amenity of the local area or any habitat"



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A full copy of the support and objection letters are appended to this report in the Appendix.

### **RESPONSE TO OBJECTIONS**

It is your officers opinion that the map (or plan) annexed to the TPO is valid and fulfils the requirements of the Regulations. The Regulations require that woodland being protected by a TPO is identified as an area on a map with a continuous black line and referenced as W1, W2, etc. The map annexed to the TPO clearly indicates an area referenced as W1 and the area is bounded by a continuous black line. There are small areas of the site that are not covered by trees - an area at the southern end of the site and a linear strip running through the woodland for overhead services. It is your officers opinion that open areas can form a natural part of any woodland, and that in time these areas can become wooded, and therefore it is valid to include such areas within the TPO.

In summary, the Regulations state that as soon as practicable after making a TPO, the authority must serve all interested parties with a copy of the TPO, a notice that includes the reasons for making the TPO, information regarding objections and representations and that a copy of the order should be made available for inspection, free of charge, at all reasonable hours at the Stroud District Council Offices. The TPO is available to view at the council's offices from the day it is made, and as per the Regulations, all interested parties (such as the site owners) were sent a Notice and a copy of the TPO on the date the TPO was made. The TPO is now available to view online.

Regulation 5(2)(a) requires the council to explain the reasons for making the TPO by stating these on the Notice accompanying the TPO. The reasons for making the TPO are stated on the Notice as:

*"The trees are worthy of a Tree Preservation Order (TPO) by virtue of their public amenity value and their value as a natural habitat. The tree could be affected by future development or changes in land use and the TPO is considered expedient to the full consideration of the amenity value the trees provide in any future changes. The trees (including groups of trees and areas of woodland) are important assets and of significant public amenity value and ecological value, the making of the TPO recognises these factors and helps safeguard the trees for future generations"*

It is your officer's opinion that the reasons stated above are clear and fulfil the requirements of the regulations. The comment of support would indicate that the reasons have been understood by the public as well.

A nationally recognised system of evaluation has been undertaken and the results indicated the woodland is worthy of a TPO. The woodland is located at an intersection of 2 well used public roads, it is clearly visible to large numbers of the public using the road and nearby residents. The interest of the Parish Council and support for the TPO infers a clear public interest and value. The amenity, ecological, and landscape values of woodlands is well documented. The woodland is relatively young, therefore it is not unreasonable to suggest that the amenity, ecological and landscape value is likely to increase in time.





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The proposed sale of the site brought with it a degree of uncertainty regarding the future land use of the site; a potential/possible threat to the woodland. This combined with the results of the evaluation exercise provides that it is expedient to have made, and to now confirm this TPO. The making and confirmation of a TPO does not prevent application for tree works, or development on the site. The TPO ensures that (subject to certain exceptions) the trees cannot be felled or worked on without an application being made (and consent granted). It also recognises that the trees and the woodland are an important factor in any future land use changes or development.

### **ASSESSMENT/APPRAISAL**

The woodland can be described as early mature in age; it is clearly not ancient, but nor it is recently planted. Most of the trees are self-set and have grown as the site fell into disuse in approximately the last 30 years.

The average height of the trees is presently around 10m - 12m with an stem diameter of 150 - 200mm, although a few scattered larger trees has a stem diameter of up to 500mm. The species mix includes stands of sycamore, ash, apple, hawthorn, goat willow and oak. Sycamore and ash are the dominant species. There is a developing understorey of holly, privet, beech and dogwood. The species diversity within the woodland is likely to increase with time as the ash succumb to ash dieback disease which is present in the woodland.

Some appropriate management such as selective thinning would perhaps be beneficial.

Being located between 2 busy roads and at the edge of Eastcombe and Chalford, the woodland is clearly visible to the public, with landscape presence and ecological value.

The TEMPO assessment undertaken resulted in a score and recommendation of "TPO defensible"

### **OPTIONS AVAILABLE TO THE COMMITTEE:**

Members are reminded that they must properly consider the above issues before coming to a fully reasoned conclusion as to whether to:

- 1) Confirm the Tree Preservation Order without modification; or
- 2) To confirm the Tree Preservation Order as with modifications; or
- 3) To not confirm the Tree Preservation Order.

In doing so, Members must clearly give reasons as to why they have reached their decision.

It should be noted that the Order cannot be modified to include further trees outside the boundary of the order as drawn. If consideration is required to be given to protecting further trees then a new order to cover those trees should be placed. The modification of the order can only exclude trees or draw the boundary smaller but it cannot increase it because the publicity and notification has not included any greater number of trees.



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### **RECOMMENDATION**

The woodland contributes positively to amenity in the vicinity now and this value will continue and increase. Assessment has shown it is expedient to confirm this TPO.

It is therefore recommended that TPO 0589 Land at Middle Hill, Eastcombe, Gloucestershire should be confirmed as served and long term protection provided for the trees.

There is no right of appeal the confirmation of an order so the Authority and Members have to demonstrate that they have made their decision in an even-handed and open manner. Therefore, Members are asked to consider all the information before them including the comments and objections received, prior to making a decision to confirm the order.

If the order isn't confirmed, the landowner can exercise their right to remove the trees.