

Appeals Panel Agenda

Members of the Appeals Panel

(Members needed for this meeting in bold and underlined)

Cllr S Lawn (Chairman)

Cllr A D Adams (Vice-Chairman)

Cllr S J Catchpole

Cllr K E Lawrence

Cllr M L Murrell

Cllr S Prutton

Cllr M Snowling MBE

Cllr J L Thomas

Date & Time:

Wednesday 7 April 2021 at 10.00am

Place:

To be hosted remotely at: Thorpe Lodge, 1 Yarmouth Road, Thorpe St Andrew, Norwich

Contact:

Dawn Matthews tel (01603) 430404

Email: committee.services@broadland.gov.uk

Website: www.broadland.gov.uk

PUBLIC ATTENDANCE:

This meeting will be live streamed for public viewing via the following link: [Broadland YouTube Channel](#)

You may register to speak by emailing us at committee.services@broadland.gov.uk no later than 3pm on Wednesday 31 March 2021

Large print version can be made available

If you have any special requirements in order to attend this meeting, please let us know in advance.

AGENDA

1. **To receive declarations of interest from members;**
(guidance and flow chart attached – page 3)
2. **To report apologies for absence and to identify substitute members;**
3. **To confirm the minutes of the meeting held on 10 February 2021;**
(minutes attached – page 5)
4. **Matters arising from the minutes;**
5. **The Broadland District Tree Preservation Order 2020 (No 9) Former Royal Norwich Golf Club, Drayton High Road, Hellesdon** - to consider representations received to the making of the Order
(report attached – page 11)
(Procedure to be followed for the meeting attached at page 9)

DECLARATIONS OF INTEREST AT MEETINGS

When declaring an interest at a meeting Members are asked to indicate whether their interest in the matter is pecuniary, or if the matter relates to, or affects a pecuniary interest they have, or if it is another type of interest. Members are required to identify the nature of the interest and the agenda item to which it relates. In the case of other interests, the member may speak and vote. If it is a pecuniary interest, the member must withdraw from the meeting when it is discussed. If it affects or relates to a pecuniary interest the member has, they have the right to make representations to the meeting as a member of the public but must then withdraw from the meeting. Members are also requested when appropriate to make any declarations under the Code of Practice on Planning and Judicial matters.

Have you declared the interest in the register of interests as a pecuniary interest? If Yes, you will need to withdraw from the room when it is discussed.
<p>Does the interest directly:</p> <ol style="list-style-type: none">1. affect yours, or your spouse / partner's financial position?2. relate to the determining of any approval, consent, licence, permission or registration in relation to you or your spouse / partner?3. Relate to a contract you, or your spouse / partner have with the Council4. Affect land you or your spouse / partner own5. Affect a company that you or your partner own, or have a shareholding in <p>If the answer is "yes" to any of the above, it is likely to be pecuniary.</p> <p>Please refer to the guidance given on declaring pecuniary interests in the register of interest forms. If you have a pecuniary interest, you will need to inform the meeting and then withdraw from the room when it is discussed. If it has not been previously declared, you will also need to notify the Monitoring Officer within 28 days.</p>
<p>Does the interest indirectly affect or relate any pecuniary interest you have already declared, or an interest you have identified at 1-5 above?</p> <p>If yes, you need to inform the meeting. When it is discussed, you will have the right to make representations to the meeting as a member of the public, but you should not partake in general discussion or vote.</p>
<p>Is the interest not related to any of the above? If so, it is likely to be an other interest. You will need to declare the interest, but may participate in discussion and voting on the item.</p>
<p>Have you made any statements or undertaken any actions that would indicate that you have a closed mind on a matter under discussion? If so, you may be predetermined on the issue; you will need to inform the meeting, and when it is discussed, you will have the right to make representations to the meeting as a member of the public, but must then withdraw from the meeting.</p>

**FOR GUIDANCE REFER TO THE FLOWCHART OVERLEAF.
PLEASE REFER ANY QUERIES TO THE MONITORING OFFICER IN THE FIRST
INSTANCE**

DECLARING INTERESTS FLOWCHART – QUESTIONS TO ASK YOURSELF



Minutes of a meeting of the **Appeals Panel** held remotely on **10 February 2021 at 10:00am**.

The following were present:

Cllr S Lawn – Chairman

Cllr A Adams

Cllr S M Prutton

The Conservation Officer (Arboriculture & Landscape) – presenting the case for the Order;

Mr and Mrs Anderson – objecting to the order

Cllr D Harrison – one of the local members for Aylsham)

The Democratic Services Officers (DM and JO) – advisor and host of the meeting.

11 DECLARATIONS OF INTEREST UNDER PROCEDURAL RULE NO 8

No declarations were made.

12 APOLOGIES FOR ABSENCE

No apologies were received.

13 MINUTES

The minutes of the meeting held on 20 November 2021 were confirmed as a correct record and signed by the Chairman.

**14 THE BROADLAND DISTRICT TREE PRESERVATION ORDER 2020 (NO 6)
– 19 MILLGATE, AYLSHAM**

The Chairman welcomed everyone to the Hearing and explained the procedure which had been adapted where necessary to accommodate the restrictions imposed as a result of COVID-19. Members had viewed the trees by way of photographs and had each individually visited the site and viewed the trees from the public highway before the Hearing

Two objections had been received to the making of the order from the owners of the trees and from the occupants of a nearby property.

The Panel heard from Mrs Anderson, objecting, who stated that the two trees towered above her cottage and the neighbouring bungalow. Both she and her neighbour found the close proximity of the trees intimidating and dangerous particularly in high winds. The trees were 60-70 ft. tall and sat on a 5ft tall

raised mound only 20-25 ft. from the cottage. She demonstrated the proximity with photographs which also indicated how close the branches of the tree were to the properties. She stated the trees would cause major damage to the properties if they fell. The occupier of no 15 also had similar concerns. The Scots Pine tree in the garden of no 13 (T3) had recently been felled which had left the remaining trees (T1 and T2) exposed and more vulnerable in high winds. In 2006 a previous officer of the Council had sanctioned the removal of two other similar trees which were a further distance from their cottage and a short time later over 14 trees had fallen in the garden. These two trees would have caused significant damage if they had not previously been removed and had fallen at this time. Photographs of tree debris were included in the agenda papers. Mrs Anderson stated the trees were affecting their wellbeing and residents of the adjacent properties were not willing to sleep in bedrooms near the trees. The pollen also affected the health of Mr and Mrs Stanford for up to 8-12 weeks of the year. With ever increasing periods of high winds and the funnelling effect of the garden, there was real concern the trees would fall in a storm. Having already experienced a large volume of trees falling, this left them feeling very vulnerable and anxious. Mrs Anderson stated she did not feel the trees contributed to their amenity, indeed the trees adversely affected their wellbeing.

In response to questions, Mrs Anderson confirmed that T3 had been felled in 2020 following an application by Mr Stanford. The Conservation Officer confirmed this was the case stating that, at the time the notification application had been received from Mr Stanford, there was no protocol in place for site visits during a lockdown and a visual assessment had not therefore been possible. The period of time allowed for a decision to be made had lapsed and the tree had therefore been removed by default. If he had been able to undertake a visual inspection he would likely have concluded that the tree was worthy of protection and served a PTPO.

In response to a question regarding the serious consequences/damage caused by the large number of trees that had fallen, Mrs Anderson confirmed the trees were at the back of the garden and had damaged a bothy, a wall and a Silver Birch tree. The Conservation Officer questioned if this could be regarded as serious damage and that it would be disproportionate to fell every tree because of potential damage.

The Chairman reported that Mr and Mrs Stanford who had also raised objections to the making of the Order were unable to attend the hearing and had declined an invitation to submit any further evidence. Their initial representations were included in the agenda papers and would be taken into account by members in determining the matter.

The Panel then heard from the Conservation Officer who explained that the Order (PTPO) had been made on 17 August 2020 after the Council received, on 3 July 2020, a s211 Notification (No. 20201300) to fell two Scots Pine trees located in the garden of 19 Millgate. The Order was made to safeguard

the significant visual amenity value offered by the trees to Aylsham conservation area and the wider environment. There had been a significant number of tree loss (19 in the storm and 4 removed with consent) and trees T1 and T2 were the only remaining large trees so it was considered necessary to protect them. There had been no evidence provided to demonstrate that trees T1 and T2 needed to be removed on safety grounds and the fact that they had survived recent storms when many others had not was considered to demonstrate their strength and health. The TPO would not prevent future applications for necessary remedial work to the trees nor prevent their ultimate removal if evidence was provided that they were unsound or unstable. In conclusion, the Conservation Officer stated that the criteria for making the Order had been met: the trees had visual amenity, they contributed to the biodiversity of the area, they would not cause an increase in nuisance (in reality any nuisance caused by pollen was limited to a 4 week period occurring anytime during spring) and they had a life span in excess of 10 years. He invited the Panel to confirm the Order.

In response to questions, the Conservation Officer confirmed that reducing the overall height of the trees would be unlikely to allay any of the concerns raised as the trees were no less safe because of their height. Any potential failure was more likely to be due to structural defects which could be identified as part of regular inspections by a qualified person. The trees were unlikely to affect the foundations of nearby properties as the trees were situated on raised ground and, in any event, the root network would have adapted to the soil zone around the trees and to the location to optimise their stability. The Conservation Officer confirmed that the loss of tree branches occurred on all trees as new growth was produced above older growth and could be dealt with by way of regular maintenance. The risk to safety from falling branches was statistically very small. The Scots Pine species was widespread in Europe and had adapted well to extreme weather conditions including heavy snowfall.

In response to the Conservation Officer's case, Mrs Anderson stated that the roots of trees T1 and T2 were at the same level as the bungalow occupied by Mr and Mrs Stanford. In response to questions from Mrs Anderson, the Conservation Officer agreed that, in the event that the trees did fall in the direction of the Cottage, the branches would reach the cottage. With regard to a query about the life expectancy of the trees, the Conservation Officer explained that the criteria for making an Order required a tree to have a life expectancy of at least 10 years as stated in the report and that trees T1 and T2 had a life expectancy of 100-150 years. In response to a question as to why consent had been given for the removal of two trees at the top of the objector's garden which it was suggested were more visible than T1 and T2, the Conservation Officer stated that these trees had been situated to the rear of the property and the conservation area and, in his opinion, were less prominent and did not have the same amenity value as T1 and T2.

Attention was drawn to the Conservation Officer's statements contained in the first paragraph of the third box on page 14 of the report and he apologised that these had been included in the report in error.

The Panel then heard from Cllr D Harrison one of the local members for Aylsham who stated that he supported the case put forward by the objectors and felt the trees were located too close to the properties.

The Chairman then invited closing statements.

Mrs Anderson stated that she loved trees and would plant additional more suitable trees if she was able to remove these trees.

The Conservation Officer invited the Panel to determine the Order based on factual evidence. Mindful of climate change and biodiversity, every tree was important and the planting of new trees whilst welcomed would not replace the benefits of a mature tree for a considerable number of years. A considerable number of trees had already been lost from this site, by way of them falling or being felled with consent and he invited the Panel to confirm the Order. In response to further questions, the Conservation Officer stated that he estimated the trees to be 50 years old but it was difficult to determine their potential height as this would depend on many variables. The trees were virtually mature and would not necessarily continue to grow at their previous rate but would instead reach their optimum condition. Ideally trees needed to be inspected annually/bi-annually depending on the situation to identify any potential issues and remedial work necessary to remove damaged branches.

The Panel then left the meeting to deliberate their conclusions in private together with the Democratic Services Officer (DM) who provided support. They then all re-joined the meeting and Chairman announced the Panel's decision as follows:

Having regard to all the evidence available and to the criteria used to make the Order, the Panel decided to not confirm the Order. The reasons for the decision were that on balance they considered that the amenity value of the trees was not sufficient to outweigh the nuisance factors caused by 2 very large trees standing isolated in their current location and their proximity to adjacent dwellings.

It was, accordingly,

RESOLVED that the Broadland District Tree Preservation Order (TPO 2020 No 6) 19 Millgate, Aylsham, Norfolk NR11 6HX be not confirmed.

The meeting closed at 11.13am

Appeals lodged against the making of tree preservation orders (TPOs)

The panel comprises three district councillors. At least two members of the panel must be present at each hearing.

Notes on procedure

1. Site Visit

- 1.1 Before or on the day of the hearing, members of the appeals panel may visit the site to inspect the trees subject of the appeal. If the trees are not visible from the highway, arrangements will be made with the objectors for members to gain access to the area
- 1.2 Where it is not possible to hold a site visit, photographs of the trees will be made available to members.

2. The Hearing

- 2.1 All parties (public, local parish council/district council ward representatives, council officers directly involved in the TPO, and the objector) may attend the meeting which will be held in public. If any party cannot attend the meeting, they may appoint someone to act on their behalf or they may submit written representations for consideration. Note: If the objector cannot attend the meeting nor appoint an agent to act on his behalf and they decide to submit written representations, no cross question will be allowed of any party.
- 2.2 The chairman of the panel formally opens the hearing and explains the procedure.
- 2.3 The objector presents the case for objecting to the making of the order and calls any witnesses in support of their case.
- 2.4 The council's officer and panel members ask questions (if any) of the objector and their witnesses.
- 2.5 The council's officer puts the case for the making of the order and calls any witnesses in support of their case.
- 2.6 The objector and panel members ask questions (if any) of the council's officer and their witnesses.
- 2.7 Any parish council representative, or any district councillor (who is not a member of the panel) or member of the public present, may speak to the panel.
- 2.8 The panel, the objector and the council's officer ask questions (if any) of anyone speaking at 2.7 above.
- 2.9 The Council's officer makes a closing statement

- 2.10 The Objector makes a closing statement
- 2.11 A final opportunity is given to panel members to seek clarification on any outstanding matter
- 2.12 The panel members then retire to consider their decision in private (the representative of the assistant director governance and business support will accompany them to give advice on procedural matters).
- 2.13 The panel will re-join the public meeting and its decision will be announced in public with a summary of the reasons for making its decision.
- 2.14 The chairman will advise the objector of the right of appeal, as follows:

If any person is aggrieved by a local authority's confirmation of a Tree Preservation Order, they may, within 6 weeks of that confirmation, apply to the high court under section 288 of the Town and Country Planning Act 1990, for an order quashing or (where applicable) suspending the order, either in whole or in part. The grounds upon which such an application may be made are that the order is not within the powers of that Act or that any relevant requirements have not been complied with in relation to that order.

STATEMENT OF CASE

Tree Preservation Order (TPO 2020 No.9 1311)

Address Former Royal Norwich Golf Club, Norwich, Norfolk.

BACKGROUND TO THE MAKING OF TPO (2020 No.9 1311)

The Area Provisional Tree Preservation Order (PTPO) was made on 16 October 2020 after the Council received reports of tree removal at the former Royal Norwich Golf Club. Planning Permission for the site includes the following permissions:

Application Numbers

- 20151770 - Hybrid Application: 1. Outline proposals for the demolition of the existing club house and associated structures and development for up to 1,000 homes and associated infrastructure including up to 2ha of land to be reserved for a primary school site, approximately 1,900m² for D1/D2 community use and associated car parking and up to 15.45ha for informal and formal open space plus off-site highway works. 2. Detailed proposals for the first phase of 108 dwellings and associated infrastructure plus the off-site highway works to serve phase one and the overall scheme.
- 20171514 - Variation of Condition 5 of Planning Permission 20151770

The two areas of the TPO map cover the pre-existing golf course which is characterised by a mix of individual trees, groups of trees and areas of woodland that frame, separate and mark out the golf course greens.

The site includes mature mixed broadleaved and evergreen trees that are predominately native species; pine, oak, thorn, holly, birch, ash, poplar and sycamore; and also some ornamental species including Norway maple, cypress and cherry plum.

The trees provide a pleasant and green area of recreational space that although is privately owned it provides a green and pleasant outlook for residents especially those living in properties adjacent to the golf course and those travelling along Drayton High Road.

The road that runs between the two areas (the A1067 Drayton High Road) is a principal road as defined on the Norfolk County Transport Asset Management Plan and part of the resilience network. The route can be described as a major arterial route into and out of Norwich and many people in the wider area benefit from the tree lined route.

The allocation of the site for development was always heavily constrained by the existing trees, but in addition by surface water drainage and foul water management.

Evidence provided by the Lead Local Flood Authority (LLFA) during the planning application process posed additional pressure on the available space for retained trees.

The Council has made a provisional Area TPO to provide short-term protection. It is recognised this order will not be capable of providing appropriate long-term protection, but this Order allows the Authority time to reclassify the trees more accurately. Given the scale of this site and the restrictions associated with Covid-19 it has not been possible to have a more detailed Order.

Should the Appeals Panel support the confirmation of the Area Order our intention is to vary the Order in the future to more accurately reflect the retained individual trees, groups of trees and woodland areas and serve an additional Order to protect newly planted trees.

The Council has made the order to safeguard the significant visual amenity and biodiversity value offered by the retained trees, to the immediate area and the wider environment.

THE CASE FOR MAKING TPO 2020 No.9 (1311)

Taking the above points into consideration, please note the following:

How do the trees, subject of this report, make a significant contribution to the local environment?

The trees at the former Royal Norwich Golf Club are predominately native species occurring in planted individuals, groups and pre-existing woodland areas.

The trees are significant due to their collective form and size, being prominent to the setting of Drayton High Road, internally at the site and on the skyline when viewed from Low Road, Hellesdon High School, Hercules Road, Pinewood Close and Hospital Lane.

The open and green nature of the golf course provides a transition from the industrial and commercial areas on the outskirts of Norwich to the start of the residential areas in the outlying parishes, the landscape character is semi formal and contributes to a pleasant and green area.

They also provide significant wildlife habitat, connectivity and ecological value to the site

Is there a reason to fear the trees may be dangerous?

With exception to the previously reduced poplar trees along the school boundary, no recent evidence was provided as part of the various Arboricultural reports to suggest the trees within the site are in a poor structural or physiological condition and that they would be considered dangerous.

What is the expected lifespan of the trees, barring unforeseen circumstances?

The condition of the trees on site is predominantly good, free of defects and in good health. Some trees could be described as fair, showing some defects that could adversely affect their long-term retention.

At the present time the trees would be considered as semi-mature to mature and if maintained correctly most could have a remaining life span of between 20 to 300 plus years depending on species.

Do the trees, in their present location, show signs of causing a nuisance in the future which is unacceptable or impractical?

Many of the existing trees will be located adjacent to the boundaries of many of the new dwellings. It is foreseeable that requests for work to prune overhanging branches will be received in the future to reduce encroachment.

Work to prune back canopies or crown lift overhanging branches could resolve any issues around nuisances through a Tree Work Application and this type of remedial pruning work would be acceptable.

In our experience it is far better for residents to move to a property with an existing TPO and knowing that the trees are protected rather than seek to serve an order once the houses are occupied. It sets the tone for the area that the trees are important and an integral part of the development. Generally, residents are more accepting of issues such as seasonal leaf fall and therefore less likely to complain or request removal.

How do the trees contribute to the biodiversity of the immediate area and/or offer a habitat for wildlife?

The indigenous species of trees within the site are an important component of local biodiversity.

With mixed native broadleaved and evergreen trees providing habitat for hundreds of insect species due to the varied habitat they create, they also provide a food source and nesting sites for many birds and mammals of different species.

The trees and green space on site provide an established wildlife corridor north and east from the river Wensum corridor.

OBJECTION TO THE MAKING OF THE TPO

The Council has received one formal objection on 9 November 2020 to **TPO (2020 No.9 (1311))** which was made by Howes Percival on behalf of Persimmon Homes PHL) the developer of the Former Royal Norwich Golf Club, Hellesdon.

Objections of Howes Percival (Persimmon) *paraphrased for report, full letter included in appendix documents.*

The site was allocated for residential development (under Policy HEL 2) for up to 1000 home, this accepted that a significant number of trees would be removed to facilitate the development and that the character and visual amenity of the land would change significantly.

To serve an area order is inappropriate on the grounds of safeguarding visual amenity given the site has been granted planning permission.

An area order makes no distinction on the varied value of the trees on site.

Trees have been extensively considered throughout the redevelopment of the land. The protection of trees is not expedient now given the extensive amount of time (4 years) after permission was first granted.

Serving an Order is not appropriate or expedient as full planning permission has been granted. The normal requirement to seek the local planning authority's consent before carrying out work on trees subject to an Order is exempt when the tree work is necessary to implement a planning permission. The TPO does not offer any protection.

The planning permission sets out principles tree retention and removal. Persimmons must adhere to this and Broadland may not renege at reserved matters stage.

REPRESENTATIONS OF SUPPORT:

The Council has received fourteen formal representations of support to **TPO 2020 No.9 (1311)** made by neighbors to the site.

- 9 representations were received from residents at Hercules Road
- 3 representations were received from residents at Pinewood Close
- 1 representation received from residents at Low Road
- 1 representation received from residents at Drayton High Road

Support themes summarised for the report;

Environmental benefits

Mature trees are vitally important to a healthy environment. The roots help reduce erosion and risk of flooding. The removal of the trees will impact on air quality. The mature trees provide a windbreak from prevailing winds.

Visual amenity

They enhance the area in and around the development. The trees and woodland are long established and screen the development from neighbouring properties. Any destruction of these long-established woodland areas will have a detrimental impact on amenity and diversity.

Protecting the remaining trees is of the utmost importance. To preserve and enhance the character of Hellesdon.

Hellesdon deserves some beauty.

Health benefits

The site is a valuable and important greenspace, highly valued by residents. The green space contributes to the wellbeing of the residents. Green space and outdoor activities have been proven to enhance good mental health. This site promotes the wellbeing of families and children.

Wildlife benefits

The site is an important haven for a wide range of wildlife. Deer, birds, owls, bats, toads, squirrels, hedgehogs, are all present on site. This site is an oasis in a growing urban area which can never be replaced.

Policy

The Hellesdon Neighbourhood Plan includes statements on protecting, creating and enhancing, green infrastructure, open spaces, and in all areas leave a positive legacy for future generations. The retention of the trees and green space is in accordance with the Broadland District Council's Local Plan.

TREE OFFICER'S RESPONSE

The Council has a duty under the Town & Country Planning Act to ensure that significant trees and woodlands are protected. It is clear from the strong response in support of the TPO that local residents value the trees, wildlife and health benefits these trees bring to Hellesdon.

Many of the trees are high value and are a constraint to the available development space.

When the site was allocated, the full and detailed requirements for surface water drainage and foul water management were not apparent. Subsequent detailed requirements posed additional pressure on the available space for retained trees.

Although the trees have been extensively considered throughout the planning process, the Arboricultural information submitted only includes groups of trees and lacked detail of the trees included within the group. Requests for more detailed information were made to the Arboricultural Consultant to allow a comprehensive assessment of the proposals and these details have come forward as the various phases have.

We did not serve the Order earlier in the planning process because historically good communication between BDC and PHL was established. However, in the autumn reports came through to local members about additional tree works outside of the phase worked upon and because of concerns about the tree removal, a TPO was requested to be served by Councillors.

The Howes Percival objection suggests the TPO does not provide any protection however, by serving the Order we have once again established good communication and gained influence over the layout of the dwellings to retain the best quality trees.

The serving of the Area Order was intended as a temporary measure. An Area Order is inappropriate for providing long-term protection. Covid-19 restrictions meant a full assessment was not able to take place to reclassify the trees and exclude those of low value or those due to be removed for development.

As an Area Order, the authority cannot confirm the Order when it has modified it by adding references to trees, groups of trees or woodlands in the Schedule to the Order or the map to which the Order did not previously apply.

Nor should the authority confirm an Order if it has made substantial changes to it, for example by changing an area classification to a woodland classification.

To protect retained trees on site or make other significant changes the authority will need to vary the Order after if it is confirmed and make a further Order to detail the newly planted trees.

CONCLUSION

The two areas of trees identified within the Provisional Tree Preservation Order (PTPO) contain trees that add significantly to both the biodiversity and visual amenity value of the local area.

Although the site has been granted planning permission, more detailed information is needed to influence the site layout and to assess the importance of individuals within the groups.

The majority of trees are not considered to be in an unsafe condition at this time.

I do not believe the trees will cause an increase in nuisance to future residents which would be considered unreasonable or impractical to abate in the future.

This PTPO has been implemented and served in a just and appropriate manner. Therefore, I request that the Area Order is confirmed with a view to varying the order to cover the detailed individuals, groups and woodlands across the site in the future.

Considerations may also be made that not all the trees are worthy of protection and the Appeals Panel may decide to request further variation, removing additional trees from the order or that none of the trees should be protected and allow the order to lapse.

Date: March 2021

Imogen Mole - Conservation Officer (Arboriculture & Landscape)

Appendix

- Representation from Howe Percival (Persimmon Homes for TPO 2020 No 9 (1311))
- Map of groups of trees indicated for removal
- Historic maps of site
- THE CASE FOR MAKING A TREE PRESERVATION ORDER (TPO)
 - Within Chapter 8, Part VIII, Special Controls, Chapter I under Sections 197, 198 & 201 of the Town and Country Planning Act 1990 the Council has powers to protect and plant trees where it appears 'expedient in the interest of amenity to make provision for the preservation of trees or woodlands in their area, they may for that purpose make an order with respect to such trees, groups of trees or woodlands as may be specified in the order'.
 - 'Amenity' is not defined in law, so authorities need to exercise judgement when deciding whether it is within their powers to make an order.
 - However, in March of 2014 the Department for Communities and Local Government (DCLG) issued a guide to all LPAs on TPOs entitled – Tree Preservation Orders and trees in conservation areas. This guide indicates that:
 -
- A Tree Preservation Order is an order made by a local planning authority in England to protect specific trees, groups of trees or woodlands in the interest of amenity.
- An order can be used to protect individual trees, trees within an area, groups of trees or whole woodlands. Protected trees can be of any size or species.
- Local Planning Authorities (LPAs) should be able to show that a reasonable degree of public benefit in the present or future would accrue before TPOs are made or confirmed. The trees, or at least part of them, should normally be visible from a public place such as a road or footpath.
- The risk of felling need not necessarily be imminent before an Order is made. Trees may be considered at risk generally from development pressures or changes in property ownership, even intentions to fell are not often known in advance, therefore precautionary Orders may be considered to be expedient.
- The guidance also indicates that LPAs are advised to develop ways of assessing the 'amenity value' of trees in a structured way, taking into account the following criteria:

- Visibility
 - Individual & collective impact
 - Wider impact
 - Other Factors
 - 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.
- 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.
 - The guidance further indicates that it is important to establish a consistent approach, therefore the following points are considered before recommending a TPO:
 - Does the tree that is the subject of this report make a significant contribution to the local environment?
 - Is there a reason to fear that any of the trees may be dangerous?
 - Can the trees be expected to live for longer than ten years, barring unforeseen circumstances?
 - Do the trees in their present locations show signs of causing a nuisance in the future which is unacceptable or impractical?
 - Do the trees contribute to the biodiversity of the immediate area and/or offer a habitat for wildlife?



TOWN AND COUNTRY PLANNING (Tree Preservation) (England) REGULATIONS 2012

Town and Country Planning Act 1990 The Broadland District Council Tree Preservation Order 2020 (No.9)

The Broadland District Council, in exercise of the powers conferred on them by section 198 of the Town and Country Planning Act 1990 make the following Order—

Citation

1. This Order may be cited as the Broadland District Tree Preservation Order 2020 (No.9)

Interpretation

2. (1) In this Order "the authority" means the Broadland District Council.
(2) In this Order any reference to a numbered section is a reference to the section so numbered in the Town and Country Planning Act 1990 and any reference to a numbered regulation is a reference to the regulation so numbered in the Town and Country Planning (Tree Preservation)(England) Regulations 2012.

Effect

3. (1) Subject to article 4, this Order takes effect provisionally on the date on which it is made.
(2) Without prejudice to subsection (7) of section 198 (power to make tree preservation orders) or subsection (1) of section 200 (tree preservation orders: Forestry Commissioners) and, subject to the exceptions in regulation 14, no person shall—
(a) cut down, top, lop, uproot, wilfully damage, or wilfully destroy; or
(b) cause or permit the cutting down, topping, lopping, wilful damage or wilful destruction of,

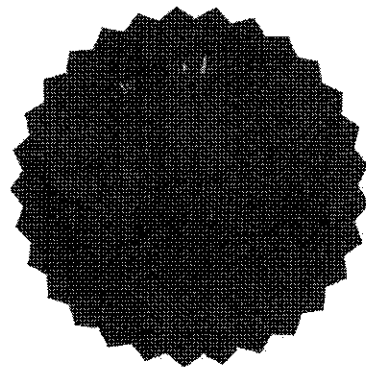
any tree specified in the Schedule to this Order except with the written consent of the authority in accordance with regulations 16 and 17, or of the Secretary of State in accordance with regulation 23, and, where such consent is given subject to conditions, in accordance with those conditions.

Application to trees to be planted pursuant to a condition

4. In relation to any tree identified in the first column of the Schedule by the letter "C", being a tree to be planted pursuant to a condition imposed under paragraph (a) of section 197 (planning permission to include appropriate provision for preservation and planting of trees), this Order takes effect as from the time when the tree is planted.

Dated this 16th day of October 2020

The Common Seal of the Broadland District Council
was affixed to this Order in the presence of—



Deputy Monitoring Officer

[Handwritten signature]

8058

SCHEDULE 1

SPECIFICATION OF TREES

Trees specified individually
(encircled in black on the map)

Reference on map	Description	Situation
NONE	NONE	NONE

Trees specified by reference to an area
(within a dotted black line on the map)

Reference on map	Description	Situation
A1	Area	620119 311358
A2	Area	620567 311527

Groups of trees
(within a broken black line on the map)

Reference on map	Description (including number of trees in group)	Situation
NONE	NONE	NONE

Woodlands
(within a continuous black line on the map)

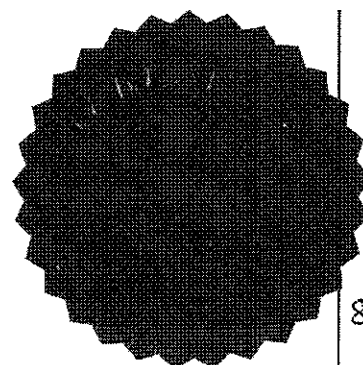
Reference on map	Description	Situation
NONE	NONE	NONE

BROADLAND DISTRICT

TREE PRESERVATION ORDER

2020 No.9

KEY

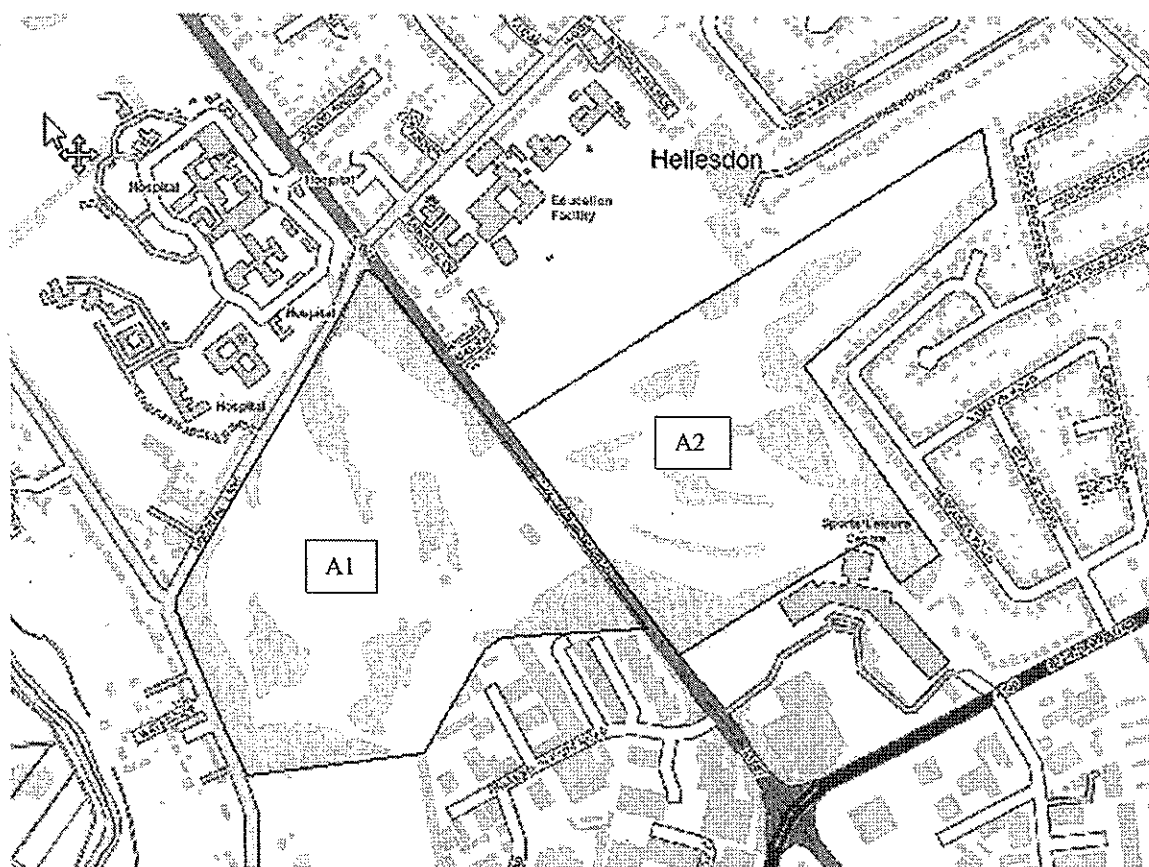


8058

Deputy Monitoring Officer

AREA OF TREES – Various species

HELLESDON



TPO 2020 No.9 (1311)

Former Royal Norwich Golf Club, Drayton High Road, Hellesdon, NR6 5AH

Scale:
1:10000

Date:
16-Oct-20

N

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**REPRESENTATIONS ON THE BROADLAND DISTRICT COUNCIL TREE
PRESERVATION ORDER 2020 (NO. 9)**

Introduction

- 1 This document constitutes Persimmon Homes Limited's ("PHL") representations on the Broadland District Tree Preservation Order 2020 (No. 9) ("TPO") made by Broadland District Council ("BDC") on 16 October 2020.
- 2 The TPO is an "area" TPO meaning that it applies to individual trees dispersed over the area to which it applies.
- 3 Unless specified otherwise, these representations apply to all of the trees subject to the TPO, namely those within areas "A1" and "A2" as shown on the map annexed to the TPO.
- 4 This document should be considered as a formal objection from PHL to the making of the TPO.

Summary objections

- 5 It is argued that allocating the Site for residential development to provide up to 1,000 houses under Policy HEL 2 established the principle of the redevelopment of the Site. This accepted that trees would be, removed from the Site to facilitate the proposed development. By changing the use of an area of land from an open 18 hole golf course to a residential development delivering up to 1,000 houses it had to be accepted that a significant number of trees would have to be felled on the Site and that the character and visual amenity of this land would change significantly as a result.
- 6 Using an area TPO, served on the basis that it will safeguard the visual amenity of the Site, despite planning permission being granted for its redevelopment in compliance with BDC's development plan, is wholly inappropriate. The contribution that the trees make to the visual amenity of this area was taken into account when the Site was being allocated and the scale of the allocation was being considered, was again considered when granting the planning permissions for the development of the Site and will be

considered again (within the scope of such planning permission) when reserved matters applications are determined.

- 7 Furthermore, the use of an area TPO, which by its nature, makes no distinction between trees that make a significant contribution to the visual amenity of a locality and those which do not have any, or very little, value, undermines BDC's rationale for making the TPO.
- 8 The protection of trees on the areas of land covered by the TPO has been considered extensively during the grant of various planning permissions for the redevelopment of this land and planning conditions have been imposed to deal with tree retention and removal. It is not expedient at this stage – almost four years after such planning permission was first granted – to make the TPO to protect trees on this land.
- 9 In any event, the making of the TPO is not appropriate or expedient in this case as full planning permission has been granted for the development of some of the areas the TPO relates to. Where the cutting down, topping, lopping or uprooting of trees is necessary to implement the full elements of the planning permissions that have been granted the TPO would not offer any protection to the trees in the areas covered by the TPO.
- 10 In addition, the documents approved by the planning permissions that have been granted set principles for the retention or removal of trees which PHL are required to adhere to and BDC may not renege from at reserved matters stage.

BDC's reasons for making the TPO

- 11 PHL were notified that BDC had made the TPO by way of a letter dated 16 October 2020. Amongst other things, this letter confirms that the TPO was made for the following reasons:

"The Council, as Local Planning Authority, has decided that it is expedient in the interests of amenity to ensure the preservation of certain trees..."

"It is deemed necessary to serve a Preservation Order to cover trees as set out in the First Schedule and Map of the attached Order, to ensure their protection and continued integration into any future site development proposals."

"The long-term protection of trees should be secured by Tree Preservation Orders rather than condition, following government advice in Circular 11/95."

- 12 The formal notice addressed to PHL which was enclosed with the letter of 16 October 2020 sets out the following reason for making the TPO:

"The Council has made the order to safeguard the significant visual amenity value offered by the trees to the immediate area and the wider environment."

Legal and national policy framework

- 13 Under section 197 of the Town and Country Planning Act 1990 ("**Act**") BDC have a duty to ensure, *whenever it is appropriate*, that in granting planning permission for any development adequate provision is made, by the imposition of conditions, for the preservation or planting of trees.
- 14 In addition, the duty under section 197 includes making such tree preservation orders as appear to BDC to be *necessary* in connection with the grant of such planning permission, whether for giving effect to such conditions or otherwise.
- 15 BDC's power to make tree preservation orders is contained in section 198 of the Act. This sets out that where it appears to BDC that it is *"expedient in the interests of amenity to make provision for the protection of trees or woodlands in their area"* BDC may make a tree preservation order. Where BDC make a TPO outside of the scope of this power such a decision may be legally challenged in the High Court.
- 16 Pursuant to Regulation 7 of the Town and Country Planning (Tree Preservation) (England) Regulations 2012 ("**Regulations**"), BDC may not confirm an order which they have made unless they have first considered objections and representations duly made in respect of it (unless these are withdrawn).
- 17 Regulation 14 sets out a number of exceptions to the list of activities that are prohibited for trees subject to a tree preservation order (as set out in Regulation 13). One of these exceptions is that none of the prohibitions in Regulation 13 shall prevent the cutting down, topping, lopping or uprooting of a tree so far as such work is necessary to implement a planning permission (other than an outline planning permission).
- 18 We note that Circular 11/95 is referred to in BDC's letter of 16 October 2020. This guidance (with the exception of Appendix A (model conditions)) has been cancelled

and replaced by Planning Practice Guidance ("PPG")¹. This cancelled Circular should not be used by BDC to support its decision to make the TPO.

- 19 The following sections of the PPG provide guidance on the scope of BDC's power to make tree preservation orders under section 198 of the Act, particularly with regard to the meaning of "amenity" and "expedient".

What does 'amenity' mean in practice?

'Amenity' is not defined in law, so authorities need to exercise judgment when deciding whether it is within their powers to make an Order.

Orders 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. Before authorities make or confirm an Order they should be able to show that protection would bring a reasonable degree of public benefit in the present or future.

Paragraph: 007 Reference ID: 36-007-20140306

Revision date: 06 03 2014

What might a local authority take into account when assessing amenity value?

When considering whether trees should be protected by an Order, 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.

¹ <https://www.gov.uk/government/publications/the-use-of-conditions-in-planning-permissions-circular-11-1995>

Individual, collective and wider impact

Public visibility alone will not be sufficient to warrant an Order. 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.*

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.

Paragraph: 008 Reference ID: 36-008-20140306

Revision date: 06 03 2014

What does 'expedient' mean in practice?

Although some trees or woodlands may merit protection on amenity grounds it may not be expedient to make them the subject of an Order. For example, it is unlikely to be necessary to make an Order in respect of trees which are under good arboricultural or silvicultural management.

It may be expedient to make an Order if the authority believes there is a risk of trees being felled, pruned or damaged in ways which would have a significant impact on the amenity of the area. But it is not necessary for there to be immediate risk for there to be a need to protect trees. In some cases the authority may believe that certain trees are at risk as a result of development pressures and may consider, where this is in the interests of amenity, that it is expedient to make an Order. Authorities can also consider

other sources of risks to trees with significant amenity value. For example, changes in property ownership and intentions to fell trees are not always known in advance, so it may sometimes be appropriate to proactively make Orders as a precaution.

Paragraph: 010 Reference ID: 36-010-20140306

Revision date: 06 03 2014

- 20 The following section of the PPG provides guidance on the use of the “area” category when making tree preservation orders:

When should the area category be used?

The area category is one way of protecting individual trees dispersed over an area. Authorities may either protect all trees within an area defined on the Order's map or only those species which it is expedient to protect in the interests of amenity.

The area category is intended for short-term protection in an emergency and may not be capable of providing appropriate long-term protection. The Order will protect only those trees standing at the time it was made, so it may over time become difficult to be certain which trees are protected. Authorities are advised to only use this category as a temporary measure until they can fully assess and reclassify the trees in the area. In addition, authorities are encouraged to resurvey existing Orders which include the area category.

Paragraph: 029 Reference ID: 36-029-20140306

Revision date: 06 03 2014

Planning background

- 21 Policy HEL2 of BDC's Site Allocations DPD (2016) allocates Royal Norwich Gold Club, Drayton High Road, Hellesdon (“**Site**”) for 800 – 1,000 homes.
- 22 PHL secured outline planning permission for the following form of development (“**Development**”) at the Site on 6 December 2016 from BDC (ref: 20151770) (“**Original Permission**”):

Hybrid Application:

1. *Outline proposals for the demolition of the existing club house and associated structures and development for up to 1,000 homes and associated infrastructure including up to 2ha of land to be reserved for a primary school site, approximately 1,900m² for D1/D2 community use and associated car parking and up to 15.45ha for informal and formal open space plus off-site highway works.*
 2. *Detailed proposals for the first phase of 108 dwellings and associated infrastructure plus the off-site highway works to serve phase one and the overall scheme.*
- 23 The TPO relates to the Site.
- 24 The Original Permission was subject to a number of planning conditions including the following:
- 24.1 Condition 3 requires approval to applications for reserved matters for each “parcel of land or phase of development” to be obtained from BDC before any development is commenced.
 - 24.2 Condition 5 which required the development under the Original Permission to not be carried out other than in accordance with the plans and documents listed in a Submission Schedule (v2) (produced by CODE Development Planners) dated 11 October 2016. This document includes the following:
 - 24.2.1 both “Masterplan – Phasing CPT-MP-04” and “Indicative Masterplan MP-05” as documents “for approval”;
 - 24.2.2 reference to a “Development Block Plan CPT-MP-01 Rev E” as a document for approval;
 - 24.2.3 three “Tree Constraints” plans (OAS-1510-TS01, OAS-1510-TS02 and OAS-1510-TS03 Rev B) and a Tree Survey Schedule (OAS / 1510 TSS-01) as for “information” only;
 - 24.2.4 the following arboricultural plans/documents for approval:
 - 24.2.4.1 Arboricultural Implications Assessment and Preliminary Method Statement – Outline Application (OAS/1510-AR02 Rev B);

24.2.4.2 Arboricultural Implications Assessment and Preliminary Method Statement – Phase One (OAS / 1510-AR03 Rev A);

24.2.4.3 Phase One – Tree Protection Plan (OAS-1510-TS06);

24.2.4.4 Arboricultural Implications Assessment and Preliminary Method Statement – Drayton High Road Improvements (OAS / 1511-AR01);

24.2.4.5 Drayton High Road Improvements – Tree Protection Plan (OAS 1511 TS01);

24.2.4.6 Drayton High Road Improvements – Tree Protection Plan (OAS 1511 TS02);

24.2.4.7 Drayton High Road Improvements – Tree Protection Plan (OAS 1511 TS03);

24.2.4.8 Drayton High Road Improvements – Tree Protection Plan (OAS 1511 TS04); and

24.2.4.9 Drayton High Road Improvements – Tree Protection Plan (OAS 1511 TS05).

24.2.5 the following highway drawings for approval:

24.2.5.1 Phase 1 Access (45986 – C – 053);

24.2.5.2 Phase 1 Access (45986 – C – 054);

24.2.5.3 Phase 1 Access (45986 – C – 055);

24.2.5.4 Phase 1 Access (45986 – C – 056);

24.2.5.5 Hospital Lane Bus Stops and Foot/Cycle Access (45986 – C-031 Rev B);

24.2.5.6 RNGC Highway Improvements Scheme Overview (45986-C-200);

24.2.5.7 A1067/Hospital Lane/Middletons Lane Junction Improvement for RNGC Development Land Only (45986-C-201);

24.2.5.8 Proposed A1067 Site Access for RNGC Development (45986-C-202); and

24.2.5.9 A1067 / Hellesdon Park Road Indicative Improvements for RNGC Development (45986-C-203).

- 24.3 Condition 13 required, amongst other things, a scheme including positions of all existing trees within 15m of the proposed development to be submitted with measures for their protection during the course of the development.
- 24.4 Condition 14 required certain particulars relating to the trees that would be affected by the Development to be submitted with the information required under Condition 13.
- 24.5 Conditions 30 – 34 and 36 – 37 require certain highway works to be carried out at certain points in the Development by reference to plans referred to in these conditions ("**Highway Works Plans**").
- 25 On 28 June 2018 PHL secured a new planning permission (ref: 20171514) ("**2018 S.73**") for the Development following a section 73 application with a variation to the Submission Schedule approved in the Original Permission to a Submission Schedule dated 28 June 2018.
- 26 This 2018 version of the Submission Schedule refers to the following as documents for approval:
- 26.1 the Masterplan – Phasing CPT-MP-04 being superseded by RNGC-MP01A;
- 26.2 the "Development Block Plan CPT-MP-01" being superseded by RNGC-MP02 & RNGC-MP03;
- 26.3 the following arboricultural plans/documents for approval:
- 26.3.1 Arboricultural Implications Assessment and Preliminary Method Statement – Outline Application (OAS/1510-AR02 Rev B);

- 26.3.2 Arboricultural Implications Assessment and Preliminary Method Statement – Phase One (OAS/1510-AR03 Rev A);
 - 26.3.3 Phase One – Tree Protection Plan (1 of 2) (OAS-1510-TS04 Rev C);
 - 26.3.4 Phase One – Tree Protection Plan (1 of 2) (OAS-1510-TS05 Rev C);
 - 26.3.5 Arboricultural Implications Assessment and Preliminary Method Statement – Drayton High Road Improvements (OAS / 1511-AR01);
 - 26.3.6 Drayton High Road Improvements – Tree Protection Plan (OAS 1511 TS01);
 - 26.3.7 Drayton High Road Improvements – Tree Protection Plan (OAS 1511 TS02);
 - 26.3.8 Drayton High Road Improvements – Tree Protection Plan (OAS 1511 TS03);
 - 26.3.9 Drayton High Road Improvements – Tree Protection Plan (OAS 1511 TS04); and
 - 26.3.10 Drayton High Road Improvements – Tree Protection Plan (OAS 1511 TS05).
- 26.4 the following same highway drawings for approval as listed above for the Original Permission.
- 27 The 2018 S.73 was subject to an informative setting out that the conditions that remain attached to the Original Permission still have to be complied with and/or discharged as appropriate.
- 28 PHL also secured a further planning permission granted on 10 May 2019 pursuant to a section 73 application which relates to Phase 1B of the Development (ref: 20181963) ("**2019 S.73**"). This includes an updated Submission Schedule dated 9 May 2019 but condition 1 on the 2019 S.73 makes it clear that this is relevant to the development of Phase 1B only. The Submission Schedule for the 2019 S.73 approves the same arboricultural plans/documents and highway drawings as set out on the Original Permission.

- 29 Under any of the planning permissions mentioned above, applications for the approval of the following reserved matters are required for each parcel / phase of the Development:
- 29.1 details of the layout;
 - 29.2 scale of each building proposed;
 - 29.3 appearance of all buildings including the precise details of the type and colour of the materials to be used in their construction;
 - 29.4 landscaping of the site.
- 30 Access is not a reserved matter under these planning permissions.
- 31 Plans RNGC-MP01A, RNGC-MP02 and RNGC-MP03 approved under the 2018 S.73 set out the approved phasing arrangements for carrying out the Development pursuant to this planning permission.

PHL's objections to the TPO

Use of an area TPO

- 32 Government guidance states that the area category of TPOs is intended for short term protection in an emergency and may not be capable of providing appropriate long term protection. The nature of an area TPO is that it is indiscriminate and protects all trees regardless of merit. In addition, as an area TPO, the TPO will protect only those trees standing at the time the TPO is made, so it may over time become difficult to be certain which trees are protected. The PPG states that authorities are only advised to use this category as a temporary measure until they can fully assess and reclassify the trees in the Area.
- 33 Since the outline planning permission was granted BDC has had four years in which to assess the visual amenity value of the trees within the Site. The PPG points out BDC officers have the right to enter land in order to assess the amenity value of trees when considering making a TPO.
- 34 However it is our understanding that BDC has made no effort during the last four years to survey any of the trees on the Site or engage in any dialogue with PHL as to which trees they are keen to see retained and which therefore should have the protection of

a correctly applied TPO. Indeed, this is something which PHL considered had been done through the site allocation and planning application processes already – which did not result in a tree preservation order being imposed.

- 35 Instead, the serving of this area TPO appears to be an afterthought and a knee jerk reaction to protecting trees whose removal has either already been agreed and approved by the granting of an outline planning permission or assessed during the site allocations and planning application process, following which no TPO was made.
- 36 PHL consider there is no need for “emergency” protection. We understand that PHL have consulted with BDC each time trees have been removed from the Site.
- 37 Justifying the making of the TPO both to stakeholders and BDC Members and ensuring the correct tree preservation order designation is used is a matter which BDC must consider when determining whether to confirm the TPO (see *Dairy Crest Limited v London Borough of Merton* [2015] EWHC 2468 (Admin)).
- 38 In this case it is considered that the requirement in the PPG that “*where a Tree Preservation Order may be justified, the officer should gather sufficient information to enable an accurate Order to be drawn up*” has not been met. Indeed, for the reasons set out below, it is not considered that BDC have justified the making of this area TPO on amenity grounds.

Amenity value of the trees subject to the TPO

- 39 The TPO has been imposed on this site on the basis that BDC wish to safeguard what it considers to be the significant visual amenity value offered by the trees to the immediate area and the wider environment.
- 40 However before the TPO is made or confirmed the PPG sets out that BDC need to demonstrate that the protection offered by the TPO would bring a reasonable degree of public benefit in the present or future.
- 41 The PPG makes it very clear that “amenity” means visual amenity and requires that trees selected for inclusion within a TPO should be visible from a public place – for example, a road or a footpath.
- 42 For many years the Site (and the area covered by the TPO) has been privately owned by the Royal Norwich Golf Club and the visual amenity value of the trees to the general

public has therefore been limited, with access to the Site being limited to members of the golf club. Now the Site is in private ownership with no legal access for the public. Therefore, very few of the trees included within the TPO are visible from a public place and the vast majority of the trees do not meet the criteria under the PPG and should not be included within a tree preservation order.

- 43 In 2016 BDC allocated the whole site for housing Policy HEL 2 states that adequate landscaping and green infrastructure are to be provided in accordance with relevant policies, with a particular emphasis on retaining and protecting the existing trees wherever possible on the Site.
- 44 The allocation of the Site for residential development firmly established the principle of this site being redeveloped for residential use.
- 45 Whilst the Policy does acknowledge the presence of the trees on the Site it does not highlight their retention as a significant constraint, only requiring them to be retained within the overall landscaping of the site, wherever possible. No mention is made within the Policy of the significant amenity value of these trees. The number of houses to be accommodated on the Site, together with all the associated infrastructure, including drainage and roads, would necessitate the removal of a significant number of trees. It is not possible to develop the site, in accordance with the Policy, without removing a number of the trees.
- 46 Indeed, there is nothing in the Inspector's report prepared prior the adoption of BDC's Site Allocations development plan document relating to this Policy HEL 2 or this Site which refers to the amenity value offered by trees on the Site.
- 47 The development of this will undoubtedly result in a significant alteration to its landscape and character from its original use as a golf course and this must have been acknowledged when the allocation was confirmed.
- 48 The outline planning application was prepared by PHL on the basis of the HEL 2 allocation with the application supported by a full Arboricultural Impact Assessment. The Arboricultural Impact Assessment highlighted the categories of the various groups of trees and individual specimens, identifying those groups to be lost, those to be retained in part and those to be retained in full, which provided a framework for the development of the Site.

- 49 The masterplan for the proposed development took full account of the trees on the Site and their classification set out in the Arboricultural Impact Assessment.
- 50 This information formed the basis of the outline planning application and was fully considered by BDC at that time.
- 51 During the processing of the application we understand that Hellesdon Parish Council stated that whilst the Parish Council is keen to support the retention of mature trees this should not be at the expense of the provision of useable areas of public open space which are accessible to all and enable a variety of activities.
- 52 As a result of this input by the Parish Council we understand that the approved masterplan includes a full 2 ha of sports pitches, which by their nature must be devoid of any tree cover.
- 53 It is PHL's position that the amenity value given to the retention of all the trees on the site has to be assessed within the context of the public amenity benefit that would be derived from the development of the Site to provide much needed housing, wooded areas for informal recreation and cleared areas of open space for recreation.
- 54 Outline planning permission was granted on this site for up to 1,000 houses with associated infrastructure and community facilities and it is assumed that the amenity value of the trees on the site, as categorised by the approved Arboricultural Impact Assessment, was considered at that time. It must have been accepted that the character of the site would, therefore, change from (private) recreational to residential and that many of the trees are scheduled to be removed to facilitate this approved development. It is inappropriate, therefore, to place the TPO on all the trees on the Site.
- 55 Since the granting of the outline planning permission we understand that the trees on the site have been actively managed by PHL using expert arboricultural services and involving BDC's Tree Officer.
- 56 Discussions have taken place with the Tree Officer regarding the detailed design of Phase 1 and other informative works such as root surveys and it has always been recognised that, where possible, better quality trees that do not conflict with the approved development, should be retained. To date these matters have been resolved by discussion between PHL and BDC.

- 57 It is generally not considered expedient to serve a TPO on land that is under good management and the TPO only serves to put a further hurdle in place to the delivery of the Development, in accordance with BDC's development plan. The presence of the area TPO on the whole site will cause severe delays in the delivery of much needed housing.
- 58 The blanket protection of all the trees on the site by the area TPO, which by its nature makes no distinction between trees that make a significant contribution to the visual amenity of a locality and those which do not have any, or very little, value, undermines the whole principle of TPOs. The TPO legislation should be carefully applied to ensure the protection of those trees which meet the criteria for such protection only. In this case, PHL are concerned that – with no clear or coherent reason – the making of the TPO is only serving to place a further hurdle to the delivery of the approved Development.

Previous consideration of trees

- 59 The protection of trees was considered by BDC when granting the planning permissions referred to above and consideration of whether a tree preservation order was *necessary* to give effect to any planning conditions on the planning permissions granted, or otherwise, should have been something that was previously considered. This was required under BDC's duty pursuant to section 197 of the Act.
- 60 The Original Permission was granted on 6 December 2016 and significant time has passed since that date. If it was expedient to make a tree preservation order under the powers in section 198 of the Act then this is something which should have been contemplated and acted upon long before now.
- 61 As summarised above, the planning permissions that have been granted for the Development approve certain works in connection with trees and set the parameters for future retention/removal of trees. That is something that has already been assessed as acceptable by BDC in connection with the Development of the Site.
- 62 PHL consider it simply is not expedient or necessary to make the TPO at this stage to safeguard amenity when either full planning permission has already been granted for the removal of certain trees (see further below) or the parameters of tree removal – or indeed retention - have been set and conditioned at the outline stage.

- 63 Put simply, if it was expedient (or necessary) to make the TPO in relation to trees on the Site that should have been done at or shortly following the decision to grant the Original Permission.

Exceptions to protection under the TPO

64 The highway works

- 64.1 As set out above, the hybrid (or full in respect of the 2019 S.73) planning permissions that have been granted for the Development require certain highway works to be carried out by certain points of the Development.
- 64.2 Access is not a matter for further consideration under reserved matters applications for the Development. In addition, plans RNGC-MP01A, RNGC-MP02 and RNGC-MP03 do not show the area in which the highway works are to be carried out as within any phase or parcel of the Development.
- 64.3 PHL must carry out the Development in accordance with the plans and documents listed on the relevant approved Submission Schedule (pursuant to condition 5 of the Original Permission or condition 1 on the 2019 S.73 (for the land related to the 2019 S.73). The Submission Schedule clearly sets out approved highways plans.
- 64.4 As a result of the above, where the cutting down, topping, lopping or uprooting of trees is necessary to implement the planning permission to carry out these approved highway works, these are works which benefit from the exception in Regulation 14 of the Regulations.
- 64.5 The affected trees are set out in the tables at paragraphs 5.2 to 5.4 of the Arboricultural Implications Assessment and Preliminary Method Statement – Drayton High Road Improvements (OAS / 1511-AR01). These are trees (or groups of trees) are T1, T2, T16 – T23, T24, T26, G1 and G3 – G7.
- 64.6 Given the principle of the removal of these trees is already approved by BDC and benefits from the exception in Regulation 14, it is not considered expedient – or indeed appropriate – for the TPO to cover these. However, in any event, the TPO should not prevent the removal of these trees – in accordance with the method set out in the Arboricultural Implications Assessment and

Preliminary Method Statement – Drayton High Road Improvements (OAS / 1511-AR01) – under the Regulation 14 exception.

65 Full elements of the Development

- 65.1 As set out above, the planning permissions that have been granted by BDC include full planning permission for some elements of the Development (other than the highway works), namely in respect of the first phase of 108 dwellings (“Phase 1”).
- 65.2 Any cutting down, topping, lopping or uprooting of trees that is required to implement this full planning permission would be authorised under the exception in Regulation 14.
- 65.3 The relevant approved document here is the Arboricultural Implications Assessment and Preliminary Method Statement – Phase One (OAS / 1510-AR03). This document sets out, at paragraph 5.3 and P.20, that trees T26, T37, T38 and G27 will need to be removed and part of G26, G28, G29 and G30 will need to be removed (to accommodate the layout and with further works and removals to G26 and G30 required in subsequent phases)..
- 65.4 As set out above, it does not appear expedient or appropriate to include trees in the TPO which may be removed under the exception in Regulation 14.

66 Outline elements of the Development

- 66.1 The exception in Regulation 14 which allows the cutting down, topping, lopping or uprooting of trees in so far as necessary to implement a planning permission does not apply to outline planning permissions.
- 66.2 However, in this case, the planning permissions that have been granted include approved document Arboricultural Implications Assessment and Preliminary Method Statement – Outline Application OAS/1510-AR02 Rev B as part of the relevant Submission Schedules. At paragraph 6.2 this document sets out the trees and groups of trees that are to be removed in their entirety or in part as part of the Development.
- 66.3 Whilst at this stage, removal of the trees listed would not be authorised by the exception in Regulation 14 and the planning permissions that have been

granted, we consider that the principle of removing these trees is already established for the purposes of subsequent reserved matters applications. As a result, regardless of the TPO, we consider that BDC should not require the retention of any of the trees set out for removal at paragraph 6.2 of the Arboricultural Implications Assessment and Preliminary Method Statement – Outline Application OAS/1510-AR02 Rev B.

66.4 This is for the following reasons:

66.4.1 Whilst conditions may be attached to reserved matters approvals, such conditions cannot concern matters outside the scope of an outline permission. This is clearly confirmed in the following section of the PPG:

Can conditions be attached to reserved matters applications relating to outline planning permissions?

The only conditions which can be imposed when the reserved matters are approved are conditions which directly relate to those reserved matters. Conditions relating to anything other than the matters to be reserved can only be imposed when outline planning permission is granted.

Paragraph: 025 Reference ID: 21a-025-20140306

66.4.2 It is unlawful for local planning authorities to misuse reserved matters in a way that would “indirectly and without paying compensation achieve what would amount to a revocation or modification of a permission already given”².

66.4.3 It is also the case that reserved matters approval should not be withheld on a ground that had already been decided in principle at the grant of an outline planning permission³. That could have the effect of reopening an issue that was already decided and frustrating the grant of the outline planning permission.

² *Kingsway Investments (Kent) Ltd v Kent County Council* - [1971] AC 72 – paragraph 96A

³ *Thirkell v Secretary of State* [1978] JPL 844

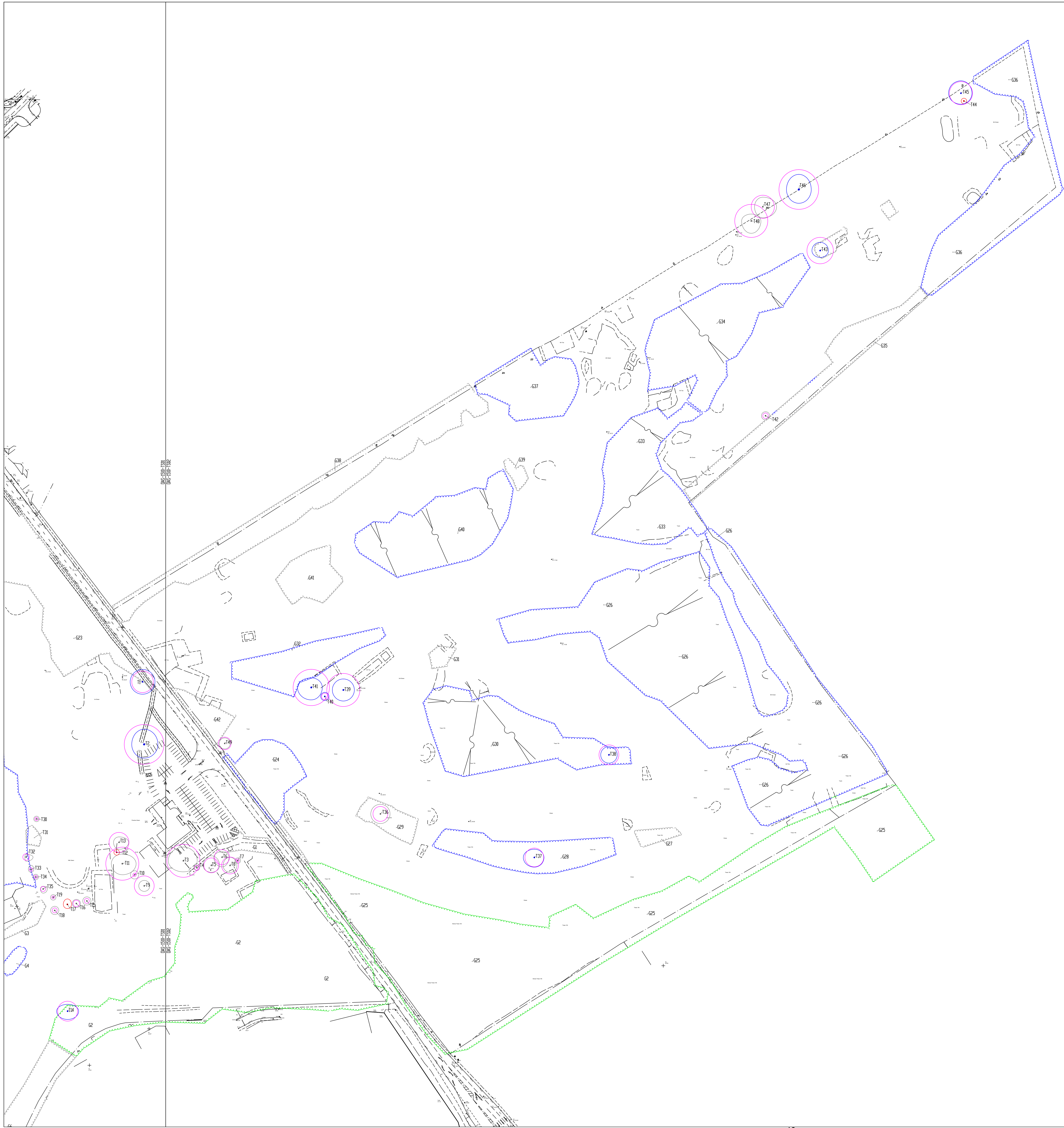
66.4.4 An outline planning application enables the principle of development and land use to be established⁴.

66.5 Indeed, it would not be in the interests of PHL to remove any of the trees which are listed for retention in the Arboricultural Implications Assessment and Preliminary Method Statement – Outline Application OAS/1510-AR02 Rev B as this may give rise to an inability to comply with the condition requiring adherence to this document. This reinforces that it is not expedient for BDC to make the TPO in respect of such trees.

66.6 Where trees are not otherwise covered by the arboricultural documents approved by the planning permissions that have been granted (as set out above), the integration of trees into future development proposals is a matter for BDC to deal with when considering reserved matters applications for phases of the Development. Subject to the principles that have already been established by the grant of outline planning permission, planning conditions on reserved matters approvals may deal with ensuring the development proposals suitably integrate trees.

9 November 2020

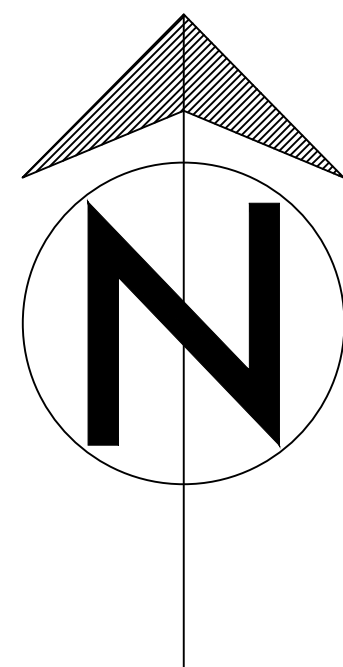
⁴ *R. v Newbury DC Ex p. Chieveley Parish Council* [1998] 7 WLUK 472



KEY

- Existing hedge or group. colour coded as above in accordance with BS 5837.
- Existing Tree or Group colour referenced in accordance with BS 5837 2005 as shown below
 - Green – Cat A Trees of quality and value
 - Blue – Cat B Trees of moderate quality and value
 - Grey – Cat C Trees of low quality and value
 - Red – Cat U Trees that are dead or showing signs of irreversible decline
- Root Protection Area as calculated in accordance with BS 5837 2005. Where RPA are not shown for groups crown extents indicate protection area limit.

**BROADLAND
DISTRICT COUNCIL**
30 Oct 2015
20151770
PLANNING CONTROL



REV.		DATE	INITIALS	DETAILS	
CLIENT Persimmon Homes			DWG. TITLE Tree Constraints Plan 2 of 3 (preliminary)		
SITE Royal Norwich Golf Course					
DRAWN BY SPM	CHECKED BY SPM	SCALE 1:1000 @A0	DATE Aug 2014	DWG NO. OAS-1510-TS02	REV. .

Tythe map, I've marked in red the approximate boundaries that are the same as those today



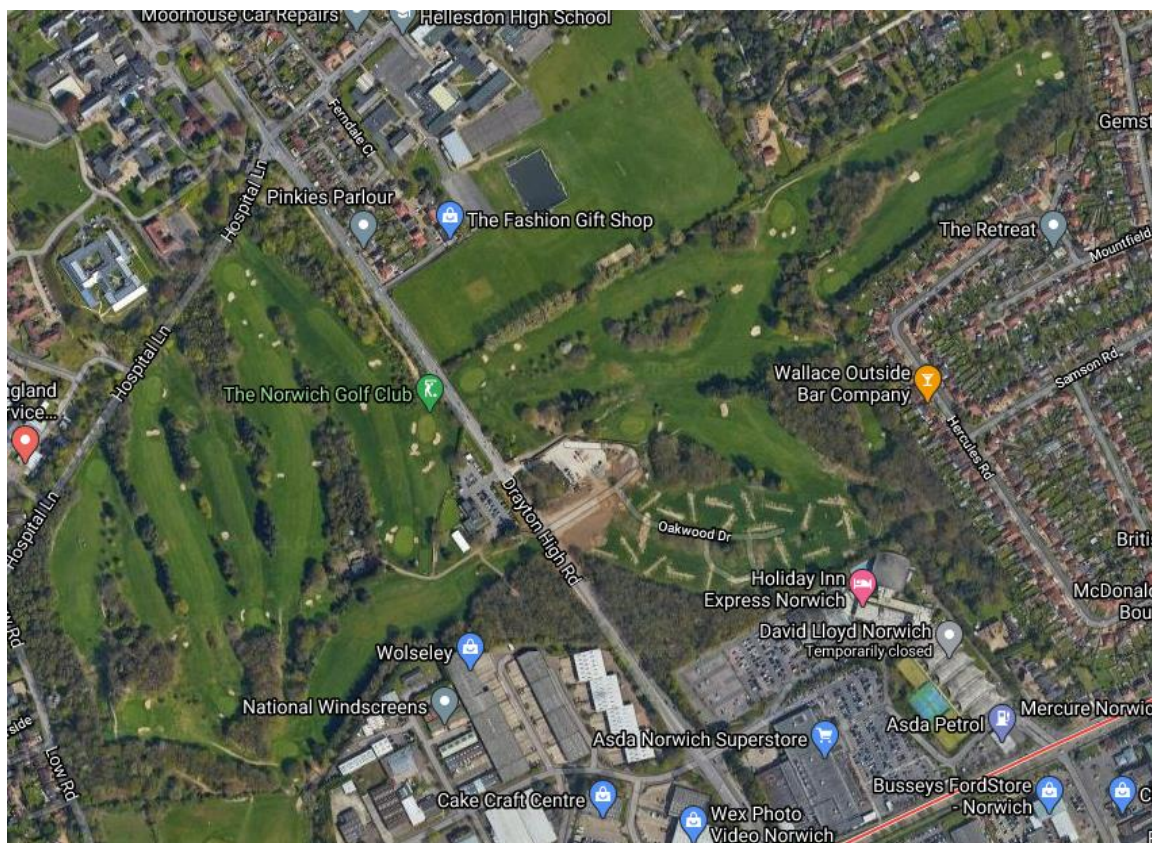
RAF map, image capture between 1946 – 1960



1988



2020



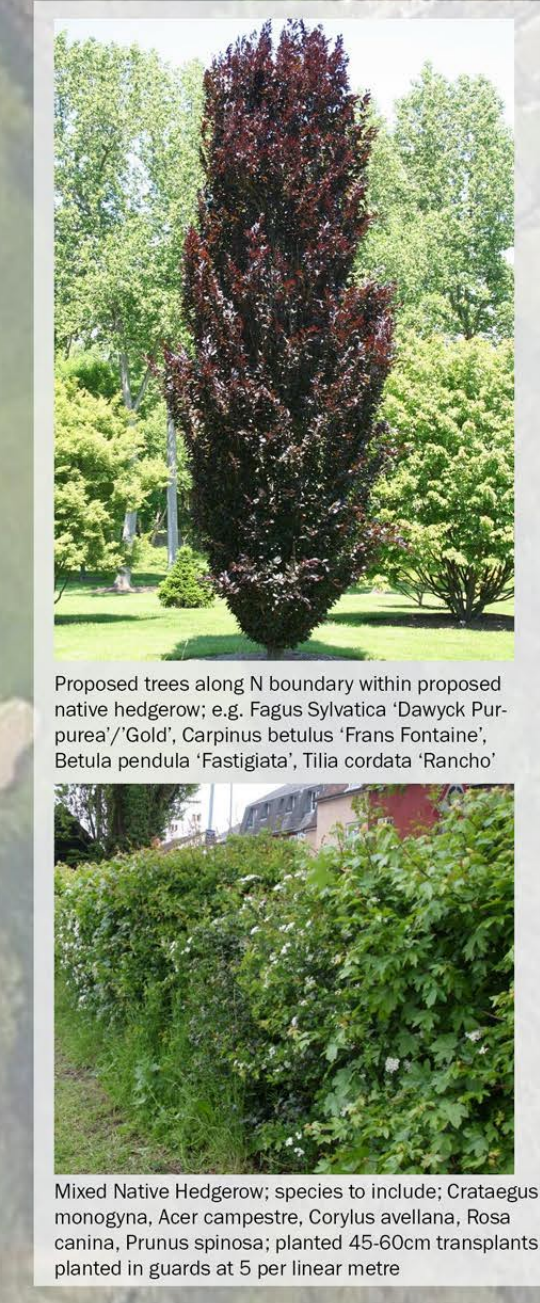
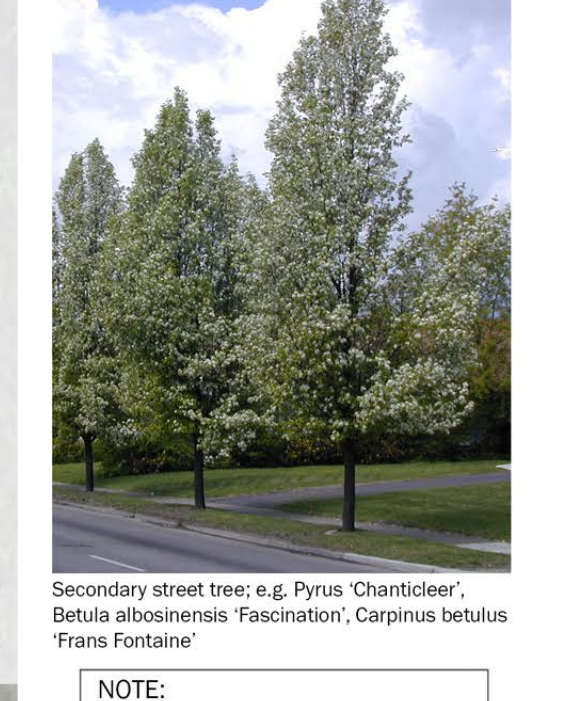


CREATION OF WILDLIFE CORRIDOR; PROPOSED MIXED NATIVE HEDGEROW (APPROX. 1.5M WIDTH) AND TREE PLANTING, MAINTENANCE ACCESS STRIP (APPROX. 1M) TO BE KEPT CLEAR OF VEGETATION

LEAP FOR EASTERN AREA TO BE DELIVERED AS PART OF PHASE 3

EXTENT OF TREE REMOVAL TO BE DEPENDENT ON DESIGN OF SURFACE WATER FLOW PATH, TO BE CONFIRMED. REPLACEMENT TREE PLANTING TO TAKE PLACE WITHIN SURFACE WATER FLOW PATH ONCE REPROFILING COMPLETE (INDICATIVE TREE LOCATIONS AND NUMBER SHOWN)

- LEGEND**
- Soft Landscape**
- Proposed specimen tree: to include seasonal colour (Extra Heavy Standard: 16-18cm girth)
 - Proposed avenue tree (Extra Heavy Standard: 14-16cm girth)
 - Proposed parkland/woodland edge tree: to be primarily native varieties (Heavy Standard: multi-stemmed: 12-14cm girth)
 - Proposed primary street tree: to be of formal character (Extra Heavy Standard: 14-16cm girth)
 - Proposed secondary street tree: to include flowering varieties (Extra Heavy Standard: 14-16cm girth)
 - Proposed tree along N boundary within proposed native hedgerow (Selected Standard: 10-12cm girth)
 - Existing trees: refer to arboricultural report for details. Grass beneath retained trees to be left uncut for wildlife benefits
 - Proposed structural planting to include hedgerow
 - Proposed ornamental planting, including plants suitable for wetland within infiltration basins
 - Proposed mixed native shrub buffer planting (e.g. *Corylus avellana*, *Cornus sanguinea*, *Viburnum opulus*)
 - Proposed lawn
 - Proposed and existing amenity grass
 - Proposed and existing long grass
 - Proposed rear gardens
- Hard Landscape**
- Proposed asphalt roadway
 - Proposed block paving: brindle/heather colour
 - Proposed block paving: buff/cedar colour
 - Proposed block paving: mid-grey colour
 - Proposed asphalt footway
- Other**
- Proposed fence treatments: timber post and rail / stone high infilling rail
 - Proposed attenuation basins: sown with meadow mixture for wetlands (suitable for seasonally or successively wet areas)
 - Site application boundary



NOTE:
1.8m high walls or close-boarded fences as boundary treatments for each plot
Approx. total: 235 proposed trees to be planted across site

Scale in metres

0	5	10	15	20	25	30
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Revisions

No.	Date	Description
A	27.08.20	Update to comments
B	02.09.20	Update to comments
C	03.09.20	Update to comments
D	12.01.21	Revised to new layout
E	14.01.21	Revised to comments
F	14.01.21	Revised to new layout and comments
G	15.02.21	Revised to new layout and comments
H	15.02.21	1 existing tree removed
I	01.03.21	3 trees added to verge

Title: Landscape Strategy Plan
Project: Royal Norwich Golf Club RD, Ph 2
Client: Persimmon House
Date: August 2020
Scale: 1:500 @ A0
Drawing No: 2412 01
Rev: 1

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POTENTIAL SCHOOL SITE

