STAFFORDSHIRE MOORLANDS DISTRICT COUNCIL

Report to Planning Applications Committee

28th September 2017

Appendices Attached –

Appendix A: Plan for TPO No. SM.304, with local public footpaths indicated.

1. Recommendation

1.1 That notwithstanding the objections received, Tree Preservation Order (TPO) No. SM.304 be confirmed without modification.

Reason for recommendation: In order to maintain legal protection over a substantial area of Ancient Semi-Natural Woodland, being an irreplaceable habitat type and having significant amenity value as a notable local landscape feature.

2. Executive Summary

2.1 Under the Council’s Constitution, there are officer delegated powers to confirm a provisional TPO in respect of which no objections or representations have been received. However, where objections or representations are received, Planning Applications Committee must consider and decide whether to confirm the Order, and in doing so must take into account such objections and representations as have been received.

2.2 TPO No. SM.304 was made as a provisional Order on 26th April 2017 as a woodland designation covering the whole of Birchall Wood. A copy of the TPO plan is attached at Appendix A.
2.3 Objection to the TPO has been submitted by the owner of the main part of the woodland, supported by 6 other individuals and organisations. A representation suggesting modification of the Order to protect only the mature trees has also been submitted by the owners of a small area of the site. A representation of support for confirming the TPO without modification has been received from a neighbouring resident. These are considered in detail at Sections 3.6 – 3.8 below.

2.4 The essence of the objections are that the only work carried out to date, and any further work planned, would not be aimed at clearing areas of woodland nor carrying out development within the site. Therefore the objectors suggest that the woodland is not under threat and a TPO would be an unnecessary restriction on appropriate management by the owner.

2.5 Following advice from the Council’s arboricultural officer in connection with serving the TPO, it is noted that the main owner has now commissioned production of a woodland management plan, and this is considered to be a positive step. Nevertheless, confirmation of the TPO would be in accordance with national and local policy, and with the Council’s adopted Tree Strategy, and notwithstanding the objections and representations received, confirmation without modification is recommended for reasons discussed below.

3 Discussion

3.1 TPO No. SM.304 applies a woodland designation to the whole of Birchall Wood, being a c.7.25 hectare (18 acre) woodland abutting the eastern edge of the existing residential area at Birchall Lane. To the north, east and south of the woodland lies enclosed farmland. A copy of the TPO plan, showing the location and extent of Birchall Wood in its local context and denoted as W1, is attached at Appendix A. The schedule to the provisional Order describes W1 as “Woodland of mixed species including Oak, Holly, Rowan, Birch, Hazel, Ash, Elm, Alder, Hawthorn and Pine”.

3.2 The vast majority of Birchall Wood is under the same ownership as the dwelling Oakhurst, Birchall Lane, with access into the wood only via the rear garden of this property. A small area of the wood, approximately 0.1 hectare (0.25 acre), immediately to the north-east of Shaw House at Churnet Manor Close, has been acquired by the owners of that property.

3.3 There is no public access into, or adjacent to, Birchall Wood. There are public footpaths in the fields to the north and east, and also along a farm track to the south, being approximately 80m from the edge of the woodland at closest, and from which there are clear views of the wood in the wider landscape. These public rights of way are also highlighted on the plan at Appendix A. Birchall Wood is also readily visible from Cheddleton Road approaching Leek to the south of Birchall.

3.4 Other than a narrow strip along its southern edge, Birchall Wood is identified as Ancient Semi-Natural Woodland, and is consequently regarded as an irreplaceable habitat type. Further details of this, and of the related policy issues, are set out at Sections 5.1 – 5.4 of this report.
The provisional TPO was made following reports from members of the public that felling and mechanical clearance operations had taken place within the main body of Birchall Wood. Officer investigation found that some work of this type did indeed appear to have been carried out. This is set out in more detail at Sections 5.6 – 5.10 of this report, together with implications for on-going management issues. Given the then uncertainty over the landowner’s intentions, and also in view of the inappropriate time of year these operations occurred (mid-April, at the height of bird nesting season), the provisional TPO was correctly made as a matter of urgency.

The owner, Mr Carr, has submitted formal objection to the TPO, and is supported in his objection by letters from 6 individuals and organisations as noted at Section 5.5 below. In summary, these representations raise the following points:

- Mr Carr was aware of Ancient Woodland status and importance prior to purchase.
- Mr Carr was aware of the strong presumption against development leading to loss of or harm to Ancient Woodland.
- Mr Carr is aware of Forestry Commission Felling Licence controls.
- There is no intention to clear fell areas of woodland, or to develop the site.
- The woodland has suffered over past years due to lack of appropriate management.
- Management work carried out recently has been to clear/make safe dead/fallen trees and re-open overgrown paths, carry out crown lifting to increase light to woodland and adjacent gardens, and re-coppice Hazel stools.
- Mr Carr is willing to draw up a woodland management plan.
- The requirement under the TPO to obtain consent for work is an unnecessary restriction in this case on the owner managing his property.

Representation has been received from Mr and Mrs Galton, owners of Shaw House and the adjacent smaller parcel of the woodland, suggesting that only specific mature trees within Birchall Wood should be protected, thus allowing unrestricted removal of self-set saplings, semi-mature trees and undergrowth.

One letter of support for the TPO has been received, from Mrs Sherratt the owner of Woodpeckers, Birchall Lane who considers that the Order should be confirmed.

Subsequent discussion and site visits with Mr Carr have established that the initial work carried out has been less harmful than early reports suggested might potentially be the case, and evidently not done with the aim of clearing or destroying areas of the woodland. Nevertheless, making the TPO is considered to have been an appropriate response to the situation on the part of the local planning authority, and in accordance with national and local policies.

Another benefit of having made the TPO is that subsequent discussion with the owner has provided the opportunity to advise that a woodland management plan could be usefully drawn up to guide future work. Mr
Carr has duly arranged and received a visit from a Forestry Commission woodland officer, and has also now engaged the services of a local arboricultural/woodland management consultant to draw up a long term management plan for the site. This is seen as a positive step.

3.11 It is widely recognised that many woodlands have declined due to a lack of appropriate management, and as a result are of less diverse structure and reduced habitat value. Government guidance on protected trees to local planning authorities advises that a woodland designation TPO should not hinder beneficial woodland management. In the event that TPO No. SM.304 is now confirmed, a suitable management plan could be submitted under covering TPO consent application and if approved could then be implemented on an on-going basis without the need for further individual applications each time an element of the management plan was due to be carried out. A TPO would therefore not be regarded as unduly restrictive.

3.12 There may be something of an argument to say that in view of subsequent information and evolving circumstances, there appears less need to maintain TPO control over Birchall Wood. However, now withdrawing current and only recently established protection from an irreplaceable Ancient Woodland would be considered an inappropriate precedent, whereas confirming the TPO would affirm the Council’s commitment to national and local policy, and to our own adopted Tree Strategy. A confirmed TPO would also maintain safeguard against future change in site ownership which could potentially lead to a new owner having a less sensitive approach to woodland management or seeking to achieve some development value.

3.13 The underlying purpose of a woodland TPO is to ensure that the site as a whole endures as woodland, and it is acknowledged that over time individual trees will come and go due to natural events and appropriate management. However, the full structure of mature canopy trees, understorey trees, new seedlings and saplings (together with shrubs and ground flora not controlled by a TPO) is important to provide diversity, resilience and ecological value. It would therefore not be desirable, nor even realistically practical, to seek to modify such a TPO to only protect certain mature trees and exclude smaller/younger trees.

3.14 On balance, it is therefore recommended that the provisional TPO No. SM.304 be confirmed as a woodland designation across the whole site without modification.

4. **Implications**

4.1 **Community Safety** - (Crime and Disorder Act 1998) Nil.

4.2 **Employees** Nil.

4.3 **Equalities** This report has been prepared in accordance with the Council’s Equal Opportunities policy.
4.4 Financial
There is no financial liability on this Council arising from making and confirming, or not confirming, a TPO – with or without modification. However, following any subsequent application for consent, anyone suffering loss or damage arising as a consequence of the Council’s decision to refuse consent, or to impose conditions when granting consent, may seek compensation from the Council; any claim must be submitted within 12 months of such an application being determined.

4.5 Legal
Nil.

4.6 Sustainability
Confirmation of the TPO would appropriately maintain protection over an irreplaceable Ancient Semi-Natural Woodland of significant local amenity value, in support of local and national environmental protection objectives and the Council’s adopted Tree Strategy.

Keith Parker
Head of Operational Services

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<tr>
<th>Background Papers</th>
<th>Location</th>
<th>Contact</th>
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<tbody>
<tr>
<td>TPO SM.304</td>
<td>Staffordshire Moorlands District Council Moorlands House Leek</td>
<td>Steve Massey Tel: (01538) 395788</td>
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Decision:

Reason:

Interests Declared:

5. Background and Detail

5.1 Ancient Woodlands have been continuously wooded since at least the year 1600AD, and as a consequence are relatively undisturbed. An Ancient Semi-Natural Woodland, such as Birchall Wood, is one which has not been cleared and re-planted with non-native species. The continuous
land use and lack of significant disturbance have led to the development of extremely valuable habitats, and Ancient Woodlands are regarded as irreplaceable.

5.2 National planning policies and guidance have a strong presumption against development which would lead to the loss of or damage to Ancient Woodland. These in turn are incorporated into the Council's Core Strategy, with Policy NE1 stating that the Council “will not permit development proposals which would directly or indirectly result in significant harm to biodiversity conservation interests including ancient woodland”.

5.3 Wider than simply planning policy matters, Section 40 of the Natural Environment and Rural Communities (NERC) Act 2006 imposes a duty on local authorities to have regard to the purpose of conserving biodiversity in the exercise of all their functions. The Government's list, under S.41 of the NERC Act, of habitats of principal importance for the conservation of biodiversity includes lowland mixed deciduous woodlands. Birchall Wood is an example of this habitat type, which is also recognised as a priority habitat in England in association with the UK Post-2010 Biodiversity Framework, which succeeded the former UK Biodiversity Action Plans.

5.4 Whilst planning and development issues do not presently appear to be directly relevant to Birchall Wood, the Council's adopted Tree Strategy also includes more general aims of protecting trees and woodlands and encouraging their appropriate management. A woodland TPO can be a valuable measure in supporting such objectives, and trees do not have to be under immediate threat for a TPO to be considered expedient in the interests of amenity.

5.5 Letters of support for Mr Carr’s objection to the TPO have been received from:

- Bury and Hilton Estate Agents, Valuers, Auctioneers & Chartered Surveyors
- Churnet Valley Tree Services
- Country Land and Business Association’s (CLA) forestry and woodlands adviser
- Mr Beardmore, recent former owner of Oakhurst and Birchall Wood
- Mr Willshaw (neighbour) of Ballington Grange Farm, Lowe Hill
- Mr Matthews (neighbour) of Breckland, Birchall Lane

These representations have been submitted to give support to Mr Carr’s case that woodland management work is long overdue and would be carried out in the best interests of the site.

5.6 The major issues with the initial work which led to the TPO being made were the notably insensitive timing of these operations (during the bird nesting season), and their somewhat premature nature prior to any proper planning or consideration of long term objectives. Mr Carr has acknowledged this, and production of a management plan will give the opportunity for these issues to be addressed in a more appropriate manner.
5.7 A large area adjacent to fields around the northern part of the woodland has been cleared of all ground vegetation, but while this initially appeared severe and understandably led to concern, reference to aerial photographs has established that this was already open ground with no tree cover, and there is no evidence that substantial trees have been removed. The purpose of this was to clear a dense covering of Bracken, in order to encourage re-colonisation by more diverse native ground flora in this useful glade area. The existing mature trees around this clearing have received some crown lifting pruning, as have some adjacent to gardens of residential properties off Birchall lane, but this has been carried out to a good standard suggesting there is no intention to remove or destroy these trees.

5.8 A small digger has been used to clear tracks through the woodland, again giving rise to initial concern. However, it is understood that there were tracks and paths already in existence which had become overgrown, and although some saplings may inevitably have been removed to achieve this, there is again no indication of mature trees having been removed. Certainly it is considered reasonable to provide and maintain suitable access around a large woodland site, whether for maintenance access or simply to be able to walk round the site. It is understood that there is no aim to lay hardcore or other surfacing over these tracks.

5.9 There has been some re-coppicing of previously coppiced Hazel stools and a few understorey Birch, fuelling concern over potentially more widespread tree removal. This has clearly not been sufficient to exceed thresholds for Forestry Commission Felling Licence requirements, and therefore was not unauthorised at the time, although further work of this nature would now be subject to TPO control. In principal, traditional coppice management of Hazel, on a planned phased basis and done outside nesting season, would be beneficial for woodland structure/age diversity and for native woodland ground flora, and would be appropriately included in a site management plan.

5.10 There are numerous dead, dying and partially fallen trees within the woodland. Standing and fallen dead wood is an essential component of an Ancient Woodland habitat, but in some cases where there is a danger to site occupiers and/or neighbours, eg close to or overhanging woodland paths and adjacent private gardens, it will be appropriate to carry out precautionary felling or dead wood pruning. Such work is exempt from TPO controls, but nonetheless if considered as part of a management plan a suitable balance can be readily achieved between safety requirements and ecological benefits, in order to discourage management from being overly “tidy”.