This report seeks to uphold a Borough Council commitment to improve the quality of the built and natural environment. The protection of trees is important in order that they are able to continue to contribute to the existing and future built environment. This is consistent with the strategic aims of the Council.

EXECUTIVE SUMMARY

This report relates to one provisional Tree Preservation Order (TPO) that has not yet been confirmed by the Committee. This report seeks to list any objections or representations received and invite Members to confirm the Order without modification.

The Order relates to land at 25 and 31 Enfield Avenue, New Waltham that was the subject of outline planning DM/0551/18/OUT for 13 dwellings and includes separate land at 12 Humberston Avenue. The application was accompanied by a BS5837 Tree Report. The tree report informed the indicative site layout in regards to the outline application, indicating that in principle the site could be developed without undue detrimental impact on the higher quality trees.

Having regard to the outline planning permission and likely changes in ownership a decision was made to place a Tree Preservation Order on the site. In order to respect the outline planning permission the Order was made to protect only those trees that had an A or B categorisation under the original BS5837 Tree Report. The intention is to protect the important trees whilst the final decision on site layout is considered. A reserved matters application DM/0660/19/REM for residential development is now under consideration. It is therefore appropriate for the final decision on tree retention and or removal to be made as part of this planning application and not to modify the Order at confirmation.
RECOMMENDATIONS

That Member's agree to the following TPO being confirmed without modification:


REASONS FOR DECISION

To enable the character of area to be maintained, habitat corridors to be established, improved and maintained and assimilate the proposed new development into the existing landscape.

1. BACKGROUND AND ISSUES

1.1 The above TPO was imposed due to the threat of development. The Order was issued on a provisional basis on the 3rd May 2019, effective for six months ending on the 3rd November 2019. This report sets out objections and representations raised in response to the above Order. One letter of objection and one representation has been received.

1.2 In deciding whether to confirm the Order, the Committee must consider any letters of objections or representations received.

1.3 A land registry search was made prior to the TPO being served. The TPO was served on the registered owners of the land at the time it was made, that being; Anna Palejowska-Gregory and her brother Jan Palejowski.

1.4 Subsequently it has come to light that at the time the TPO was served the land was in the process of changing legal ownership. The owner of the land is now YPG Carpathia Limited. Officers have been told that the previous owners passed on the TPO to the new owners and as mentioned below they have commented in detail on the TPO.

1.5 On the 17th June 2019 a letter of objection was received from Cheshire Woodlands Limited on behalf of YPG Carpathia Limited. The main points raised are as follows:

   i) The Order be modified to exclude trees T766, T787 and T823. The tree trees in question are T766 Beech, T787 Scots Pine, and T823 Lime.

   ii) The Order be re-made using the Area category, pending approval of the reserved matters application, at which time it can be re-designed using the individual and group categories.
Full consideration has been given to these matters raised in objection
but it is acknowledged that the submitted reserved matters application
DM/0660/19/REM shows that the site layout has been amended slightly
in order to accommodate said trees. This demonstrates an intention to
accommodate the trees and as a result it is not considered that The
Order should be modified as requested.

In response to the representation that it should be an area order
Central Government guidance is clear that an Area Order should only
be used as an emergency measure, with the TPO being amended at
confirmation. In this instance The BS5837 Tree Report that
accompanied the outline application provided sufficient information in
order to assess which trees were most appropriate for inclusion in the
TPO. DM/0551/18/OUT set out an indicative site layout that feasibly
accommodates the trees covered by this TPO. This was conditioned.
Subsequently the layout is reflected in the reserved matters application.

The owner of 12 Humberston Avenue whilst not lodging a formal
objection has raised points in regards to possible restrictions relating to
tree management. In particular, maintenance of an existing wheel chair
access route around the perimeter of land to the rear of 12 Humberston
Avenue.

This has been taken into account and it has been explained by the
Tree Officer that it is not the intension of the TPO to restrict reasonable
and appropriate works to enable access along the established wheel
chair route to be maintained.

The Tree Officer recommends this Order is confirmed without
modification.

Not confirming this TPO would leave the important trees on this site
unprotected and possibly lead to the loss of these important trees.

None

There are no Reputation and Communication consideration to this
report as it relates to land that is currently subject to a planning
application DM/0660/19/REM. The relevant neighbouring properties
have been served with the TPO and are therefore aware of which trees
covered by the Order.
5. **FINANCIAL CONSIDERATIONS**

5.1 There are no direct financial consideration to the Council in confirming this TPO. Confirmation of this Order does not impact on capital expenditure or Council reserves. All costs of managing this Order will be met within existing budgets.

6. **FINANCIAL IMPLICATIONS**

6.1 None

7. **LEGAL IMPLICATIONS**

7.1 The protection of trees is secured not only by a special duty on local planning authorities under Section 197 of The Town & Country Planning Act 1990 to ensure that when granting planning permission they make adequate provision for preserving and protecting trees but also by a special power (in section 198) to make Tree Preservation Orders under which additional protection is conferred on specially identified trees or woodlands. An Order may be made & conferred by the local planning authority in accordance with a Model Order prescribed by the Town & Country Planning (Tree Preservation)(England) Regulations 2012. Once it is in force it becomes an offence to breach its prohibition of topping, lopping, or felling the specified trees without the permission of the local planning authority.

8. **HUMAN RESOURCES IMPLICATIONS**

8.1 There are no direct HR implications associated with this report.

9. **WARD IMPLICATIONS**

9.1 Humberston and New Waltham ward.

10. **BACKGROUND PAPERS**

   i) Copy for the TPO,
   ii) Letter of objection on behalf of YPG Carpathia Limited,
   iii) Representation from the owner of 12 Humberston Avenue.

11. **CONTACT OFFICER(S)**

11.1 Paul Chaplin (Tree Officer) - 324273

Clive Tritton  
Interim Director of Economy and Growth
3rd May 2019

NORTH EAST LINCOLNSHIRE BOROUGH COUNCIL

TOWN AND COUNTRY PLANNING ACT 1990

TREE PRESERVATION ORDER
RELATING TO TREES AT
Land at & rear of 25 & 31 Enfield Avenue,
New Waltham

Clive Tritton
Interim Director
Economy and Growth – Place
Form of Tree Preservation Order

Town and Country Planning Act 1990
The North East Lincolnshire Borough Council No. NEL255 (Land at & rear of 25 & 31 Enfield Avenue, New Waltham) Tree Preservation Order 2019

The North East Lincolnshire Borough 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 North East Lincolnshire Borough Council No. NEL255 (Land at & rear of 25 & 31 Enfield Avenue, New Waltham) Tree Preservation Order 2019.

Interpretation

2.— (1) In this Order “the authority” means the North East Lincolnshire Borough 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, willfully damage, or willfully destroy; or

(b) cause or permit the cutting down, topping, lopping, uprooting, 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 3rd day of May 2019

Signed on behalf of the North East Lincolnshire Council

..........................................................
Nominated Officer / Chris Lines

Authorised by the Council to sign in that behalf
[CONFIRMATION OF ORDER]

[This Order was confirmed by [North East Lincolnshire Borough Council] without modification on the [ ] day of [insert month and year]]

OR

[This Order was confirmed by the [North East Lincolnshire Borough Council], subject to the modifications indicated by [state how indicated], on the [ ] day of [insert month and year]]

Signed on behalf of the North East Lincolnshire Council

.................................................................
Nominated Officer

Authorised by the Council to sign in that behalf

[DECISION NOT TO CONFIRM ORDER]

[A decision not to confirm this Order was taken by [North East Lincolnshire Borough Council] on the [ ] day of [insert month and year]]

Signed on behalf of the North East Lincolnshire Council

.................................................................
Nominated Officer

Authorised by the Council to sign in that behalf

[VARIATION OF ORDER]

[This Order was varied by the [insert name of Council] on the [ ] day of [insert month and year] by a variation order under reference number [insert reference number to the variation order] a copy of which is attached]

Signed on behalf of the North East Lincolnshire Council

.................................................................
Nominated Officer

Authorised by the Council to sign in that behalf

[REVOCATION OF ORDER]

[This Order was revoked by the [insert name of Council] on the [ ] day of [insert month and year]]

Signed on behalf of the North East Lincolnshire Council

.................................................................
Nominated Officer

Authorised by the Council to sign in that behalf
## SCHEDULE

### SPECIFICATION OF TREES

**Trees Specified Individually**
*(encircled in black on the map)*

<table>
<thead>
<tr>
<th>Reference on Map</th>
<th>Description</th>
<th>Situation</th>
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Trees Specified Individually
(encircled in black on the map)

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

Woodlands
(within a continuous black line on the map)

Trees specified by reference to an area
(within a dotted black line on the map)
Tree Preservation Order No NEL255

Land at & rear of 25 & 31 Enfield Avenue, New Waltham
TOWN & COUNTRY PLANNING ACT 1990

TOWN & COUNTRY PLANNING (TREE PRESERVATION ORDERS)

(ENGLAND) REGULATIONS 2012

WRITTEN REPRESENTATION
ON BEHALF OF YPG CARPATHIA LIMITED

BY

CHESHIRE WOODLANDS LIMITED
9 LOWE STREET, MACCLESFIELD SK11 7NJ

AGAINST THE MAKING OF

THE NORTH EAST LINCOLNSHIRE BOROUGH COUNCIL
TREE PRESERVATION ORDER NO. 255 2019
(LAND AT AND REAR OF 25 AND 31 ENFIELD AVENUE, NEW WALTHAM)

OUR REF: CW/ 9586-TPO
LPA REF: NEL255
DATE: 13 JUNE 2019
1. **INTRODUCTION**

1.1 This written representation has been prepared by Andrew Bagshaw, Arboricultural Consultant with Cheshire Woodlands Limited, on behalf of YPG Carpathia Limited, the current owner of the land to which The North East Lincolnshire Borough Council Tree Preservation (Land at and rear of 25 and 31 Enfield Avenue, New Waltham) Order 2019 (the Order) relates.

1.2 This representation is submitted under the provisions of section 199(3) (b) of the Town and Country Planning Act 1990 and Regulation 6 of the Town and Country Planning (Tree Preservation) (England) Regulations 2012.

2. **BACKGROUND**

2.1 Planning application DM/ 0551/ 18/ OUT was submitted to the Local Planning Authority (LPA) on 3 July 2018, seeking outline planning permission for a residential development of thirteen new dwellings and associated works including the demolition of 31 Enfield Avenue. Access was dealt with in detail, with all other matters - including layout, tree protection and landscaping - reserved for future approval.

2.2 An indicative layout (RD 3979-04B) was submitted with the application to show how the site could be built out. The indicative layout is not an approved drawing for planning purposes.

2.3 The outline application included a survey of trees on and adjacent to the site and a supporting arboricultural report.

2.4 The outline application was approved in November 2018. I have not had sight of the planning decision notice.

2.5 The Order was made and served by the LPA on 3 May 2019. For the purpose of this representation, I have assumed that it was properly served.

3. **THE ORDER**

3.1 The First Schedule of the Order identifies fifty-six individual trees (T753 to T966) with the locations of each identified by black circles on the accompanying TPO map.

3.2 The Regulation 5 Notice served with the Order states,

‘The Council has made the order:

1. As a consequence of planning application DM/ 0551/ 18/ OUT, in order to protect those trees that were highlighted within the BS5837 tree report accompanying the planning application that were designated an A or B amenity categorisation. The
tree officer considers it prudent to offer the A and B category trees the protection of a TPO at this point.’

2. ‘The trees and woodlands officers also considered that the trees contributed to the landscape character of the area.’

3.3 The TPO protects all of the ‘high’ and ‘moderate quality’ A and B category trees identified for retention in the supporting arboricultural report and on the indicative layout. None of the ‘unsuitable’ or ‘low quality’ U and C category trees, and none of the A or B category trees proposed for removal, have been included.

4. CURRENT GOVERNMENT GUIDANCE

4.1 Local planning authorities can make a Tree Preservation Order if it appears to them to be ‘expedient in the interests of amenity to make provision for the preservation of trees or woodlands in their area’.  

4.2 The area category is one way of protecting individual trees dispersed over an area. The area category is intended for short-term protection…..

5. REASONS FOR OBJECTION

YPG Carpathia Limited object to the Order on the following grounds:

5.1 Three of the protected trees (T766, T787 and T823) could not reasonably be retained within the indicative layout submitted with the outline permission.

5.1.1 On a realistic evaluation of the effects of the proposal on trees in accordance with current best practice:

• Construction of a new adoptable standard access road beneath and within the Root Protection Area of tree T787 would not be possible without considerable damage to the trees roots and the underlying soils.
• The very poor spatial relationship of trees T766 and T823 with Plots 12 and 13 would be unsustainable.
• The likelihood of long-term sustainable retention of all three trees would be remote.

5.1.2 In respect of trees T766, T787 and T823, the Council’s reasons for making the Order – as set out in Reason 1 in the Regulation 5 Notice - are not justified and the inclusion of these three trees in the Order is not therefore expedient.

3 British Standard 5837:2012 Trees in relation to design, demolition and construction - Recommendations
5.2 The use of the individual tree category in the Order is inappropriate and assumes that the indicative development layout is fixed for planning purposes, rather than a matter reserved for future approval. The area category would be more appropriate as a short-term expedient and would allow the necessary flexibility during the reserved matters stage.

5.3 We request that:

- The Order be modified to exclude trees T766, T787 and T823
- The Order be re-made using the area category, pending approval of the reserved matters application, at which time it can be re-designated using the individual and group categories

5.4 We request that the Council takes into account the objections contained herein when deciding whether or not to confirm the Order and when giving weight to the Order in relation to current and future planning applications, appeals and negotiations.

5.5 The representations, objections and opinions, actual or implied, contained herein are given without prejudice to any future interest, of any party, in the land affected by The Order.

A Bagshaw
Cheshire Woodlands Limited

On behalf of YPG Carpathia Limited
26 August 2019
REF TO MISSING LETTER JUNE 2019.
Re: NEL 235.
Land at rear of 25-31
Enfield Avenue, New Walton.
TPO order 2019.

Miss P. Neilson
12 Humberston Ave.
Humberston.
Grimsby.
N.E. Lines.
DN36 4SJ.
Tel 01472 812252.

Dear Paul Chaplain,

With regard to our telephone conversation Wed 19 June 2019. I would like the letter dated 17 June to be listed filed, as an observation, that we have no objection to the TPO's placed on the trees (as listed in my letter) on our land, near to our border, east of line edged in blue on the plan.

Thank you for answering any queries or concerns.

Yours Sincerely,
R. Neilson

RECEIVED
30 AUG 2019
Date 17th June 2019
Ref: NEL 255

Miss R. NELSON
12 Humberston Ave
Humberston
GRIMSBY
N. E LINCS
DN36 4JT

RECEIVED
18 JUN 2019

Tel 01472 812252.


Dear Sir/Madam

With regard to the Tree Preservation Order 2019 made on 3rd May, and as owner/occupier of the land adjacent to the TPO.

Question: Why have our trees listed below been included in this preservation order as a consequence of planning Application DM/0351/18/01/18 -> 83837 O1 tree report?

\[
\begin{align*}
T & 959 Hawthorn  \\
T & 952 Pine  \\
T & 951 Pine  \\
T & 949 Korean Fir  \\
T & 948 “ “  \\
T & 947 “ “  \\
T & 946 “ “  \\
T & 945 “ “  \\
T & 944 “ “
\end{align*}
\]

Why have had a T.P.O put on them? esp the Korean Fir 8'/12 ft high, yet the line of trees in the middle of the application going S-SW up to 70 trees consisting of Fir, Beech, Sycamore, Ash, Hawthorn, white poplar? I refer to section 45 of the Act - over 40ft tall. Only one at 38 is to be retained with a T.P.O.

Do you mean that all those trees can be felled leaving a large void. Also numerous Ash, Hawthorn & Sycamore also on the site, many with nesting birds at the moment.
That also we would have to apply to prune a branch off our trees to cultivate/mow if they were in the way, esp. for my brother who is quadriplegic and would not be able to get round his path in his electric wheelchair.

This could also affect the future value of any future building or selling of this property by ourselves.

Yours Sincerely,

Miss R. Nelson

[Signature]