

FOR PUBLICATION

CHESTERFIELD BOROUGH COUNCIL **(LANGHURST ROAD)** **TREE PRESERVATION ORDER NO. 351, 2020**

MEETING: Planning Sub-Committee

DATE: 27th January 2021

REPORT BY: Development Management & Conservation Manager

WARD: Brockwell

For publication

1.0 PURPOSE OF REPORT

1.1 To inform Committee of objections which have been received to the above Tree Preservation Order.

2.0 BACKGROUND

2.1 On the 19th August 2020, the Council made a Tree Preservation Order in respect of a woodland adjacent to Langhurst Road, Ashgate after an enquiry was made to Planning Service on the 4th August 2020 to check whether there were any restrictions on the trees as the owner of the land proposed to remove the trees in preparation for development.

2.2 The trees were inspected and an assessment was carried out to ascertain the woodlands amenity value using the Tree Evaluation Method for Preservation Orders (TEMPO) which is used by the Council to assess whether or not an individual tree, group of trees or woodlands have any amenity value. The Tree Evaluation Method for Preservation Orders assessment is attached to the report at Appendix A. The woodland scored 20 points which concluded that the woodland definitely merits a Tree Preservation Order. The woodland as a whole unit is very prominent from the public highway and footpath and contributes significantly to the amenity of the local area, streetscene and network of footpaths and cycle paths that are located along the River Holme Brook. The Order plan is attached at Appendix B and photographs of the woodland are attached at Appendix C.

2.3 The woodland consists of a mixture of trees species which include mainly Sycamore, Willow, Silver Birch, Ash, Hawthorn, Alder, Holly, Apple and Poplar. The woodland has developed over time naturally through succession, taking advantage of the waste spoil that was tipped on the site in the past. To the north of the site is the Holme Brook watercourse which provides a valuable tree lined wildlife corridor which expands into the site towards Ashgate Road as shown in figure 1 below.

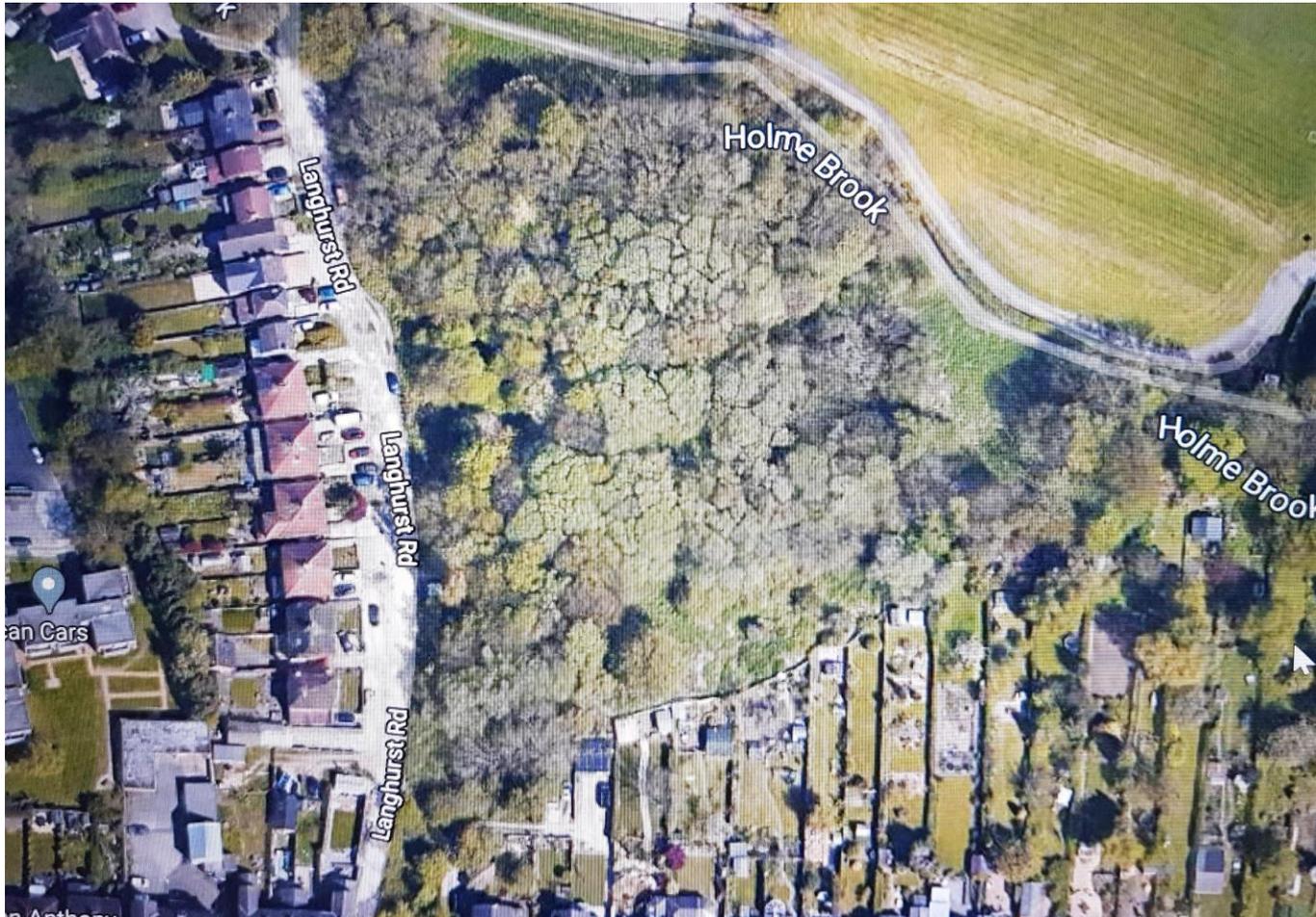


Figure 1: Google image 2020 Langhurst Road.

The woodland is therefore a continuation of the River corridor providing a valuable green space and a green buffer to Brockwell School to the north. The woodland is highly visible from the highway, cycle lanes and footpaths contributing to the amenity and character of the area.

2.4 Historical maps 1888-1913 show the area where the woodland is located as enclosed fields boundaries and tracks leading to Holme Hall and Newbold as shown in figure 2 below.



Figure 2: National Library of Scotland Image 1888-1913

- 2.5 The historical maps 1949-1969 then show a change of land use and housing along what is now known as Langhurst Road as shown on figure 3 below.

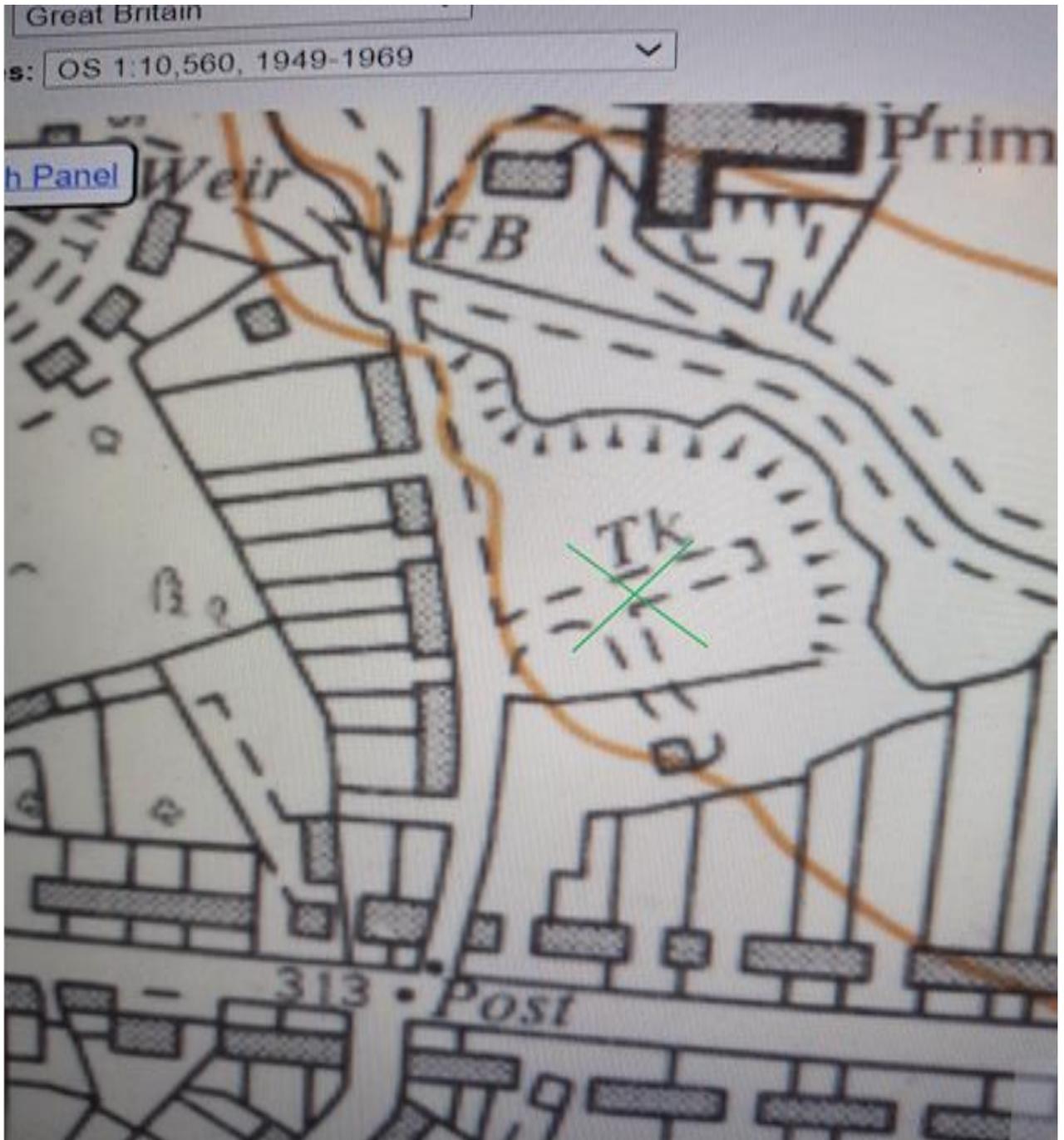


Figure 3: National Library of Scotland Image 1949-1969

- 2.6 Notices of making the Order were served on those directly affected including the owner of the land, other local residents whose properties either adjoin or are close by, together with statutory undertakers. Site notices were also placed around the site.
- 2.7 Under Regulation 6 of the Town and Country Planning (Tree Preservation) (England) Regulations 2012 objections to the Emergency Order which was made had to be delivered to the Council in writing by the 21st September 2020. The Emergency provisional TPO expires on the 19th February 2021 and must be either confirmed or otherwise by that date.

3.0 **OBJECTIONS**

- 3.1 Two objections were received to the woodland Order by Mr Stockton the Landowner and Mr Bussey of JCA Arboricultural Consultants.
- 3.2 Mr Andrew Bussey of JCA Arboricultural Consultants submitted an objection report to the Tree Preservation Order on behalf of the landowner Mr Stockton which was received on the 17th September 2020. A copy of the consultant's objection report is attached to the report at Appendix D. Mr Bussey objected to the Order on the following four points:
1. The main area of the site comprises dense, self-seeded pioneer species including Goat Willow, Common Ash, Downy Birch and Hawthorn which have grown on an area which was originally used on as a dumping ground for pottery waste and furnace ash. It should be noted that Birch sp. was noted included on the TPO Schedule
 2. The trees located within the former dumping ground/builders' yard were found to be of a poor individual form in general, being either of a multiple stemmed nature or of a poor and slender form. Additionally, as the majority of trees are located on what is made and loose ground, many trees were noted to have rising root plates, this is a sign that the trees have reached their full growth potential for their locations and are likely to collapse or fail in the near future.
 3. Those trees which are located on the former dumping ground/builders' yard are not considered worthy of protected status under the remit of a Woodland Tree Preservation Order.
 4. In light of the fact that there are trees of note located adjacent to Holme Brook, our client has accepted that these trees are worthy of protected status and would like the Woodland Order to be amended to only include these trees, as well as a 5 metre buffer from the top of the riverside bank into the site. This would retain the amenity value of the riverside woodland and retain the wildlife corridor that this group of trees provides. It should be noted that our client has intention for a future development within the confines of the former dumping ground/builders' yard. During our site meeting, our client confirmed that new tree planting would form a substantial part of the development proposals. Additionally, our client also stated that he is more than happy to introduce new tree stock into the riverside woodland in order to enhance its amenity value and to provide a more varied species diversity.
- 3.4 A further objection was received by email on the 18th September 2020 from the landowner Mr J Stockton. A copy of the objection email is attached to

the report at Appendix E. Mr Stockton objected to the Order on the following three points:

1. The site at Langhurst Road has historically been in the local plan as an area to be developed for housing. This order would in its current form stop this or reduce its viability. The intention is to develop the site with improvements to Langhurst Road and the junction of Langhurst Road and Ashgate Road along with housing, the majority being bungalows and maybe a small mix of flats sold on a part buy, part rent ownership basis. From discussions with the Council there is a shortage of such properties in the borough. The objector believes the benefits to the community of such a scheme far outweighs the loss of some poor quality trees which are nearing the end of their lifespan due to the nature of the ground which they are growing in and the effects of disease (ash die back).
2. The site was used as a waste tip for pottery waste and ash up until the early 1900s with more recent tipping of spoil in the late 1970s early 1980. The site was cleared of tree's in the late 1970 and the trees which are there now are self-set pioneer species no older than 50 years.
3. As a responsible developer the objector is willing to compromise and as stated in the consultant's correspondence would be happy to form a wildlife corridor along the Holmebrook boundary of the site.

4.0 **RESPONSE TO OBJECTIONS**

- 4.1 In response to the objections, the Councils Strategic Planning & Key Sites Manager was consulted regarding the Chesterfield Local Plan and site designation and the full comments can be found in Appendix F. Full responses to My Bussey JCA, and Mr Stockton's objections was provided on the 9th October 2020 and the response letter to Mr Bussey can be found in appendix G and the response letter to Mr Stockton can be found in Appendix H.
- 4.2 In response to the first point raised by Mr Bussey of JCA, Tree Preservation Orders (TPO) are served if the Local Planning Authority believe there is a risk of the trees being cut down or pruned in ways which would have a significant impact on the amenity of the area. Any tree, that one would normally call a tree can be protected by a Tree Preservation Order and in this situation, officers consider that the trees as a whole unit at Langhurst Road are at risk generally from development pressures and would have been felled if not for the Emergency TPO. The protection of trees by a precautionary TPO is therefore considered expedient so that the Council has control over any future proposals to fell or prune the trees.

Whether trees are self-seeded, planted or pioneering species is not a valid reason why the Order should not be confirmed. The order is essentially considering the amenity value of the trees. Furthermore, many mature woodlands that exist today were established by natural succession rather than being planted containing localised native tree stock which is by far the preferred option for a natural woodland.

Finally, Birch trees as well as apple, Laburnum, Lombardy Poplar, Cherry, Holly and Elder are also not included in the 1st Schedule even though they are present on the site. A woodland Order protects all the trees within the woodland area and it is not necessary for the purposes of a woodland TPO to record the number of trees and all species of tree, and a general description is sufficient.

- 4.3 In response to the second point raised by Mr Bussey and Mr Stockton, the land may have been used as a waste tip for pottery waste and ash, but it would have also been used for various other uses in the past and it is clear that the trees have taken advantage of the poor ground conditions and are thriving. Officers have visited the site on many occasions and walked through the whole area and found no evidence to suggest that where there is made-up ground it is detrimental to the tree's health or long-term growth or stability. There are some trees within the woodland that are of a poor condition but that is a natural occurrence in a woodland setting. There is also a dead Birch tree on the woodland edge that does require removing but this could be removed at any time by giving the Council 5 working days' notice of removal. The current situation is that the land is covered by trees which are of various sizes, species and age. It may be the case that some of the trees are no more than 50 years in age but there are also trees that are younger and older creating a multi aged small woodland. There is also evidence to suggest that natural regeneration is occurring in the woodland with Ash, Sycamore, Hawthorn, Hazel, Holly and Yew emerging which will succeed and take advantage when other trees are lost.

A woodland Preservation Order safeguards the woodland as a whole unit rather than individual trees. Trees which are planted or grow naturally within the woodland area after the TPO is made are also protected by the TPO so that the natural regeneration is continued. It may be the case that some of the trees within the woodland are poor in condition and multi stemmed but for the purpose of a Tree Preservation Order, it is the contribution the woodland makes as a local amenity adjacent to the River Corridor, public footpath and roadway which justifies why the preservation order was served.

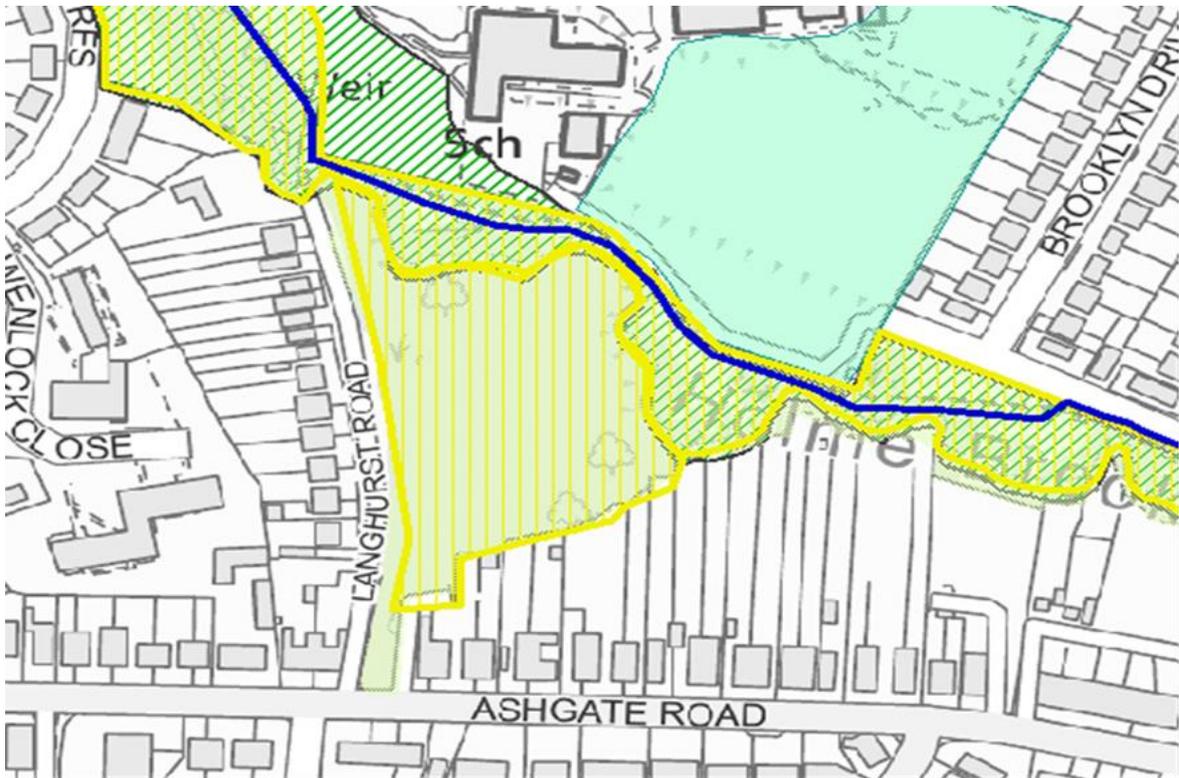
There is no doubt that a walk through the woodland, one could find many trees that could be felled due to their condition and form if assessed

individually but this would be the case for many individual trees within any woodland. It is their overall visual impact and contribution on mass to the local area that has been considered. Furthermore, if any individual trees become unsafe then the Tree Preservation Order application process can be used to remove any tree that could become or is a danger to the general public.

There is no evidence to suggest that the trees on the site are coming to the end of their lifespan due to the nature of the ground. As above it is accepted that there are some trees of poor quality and condition, but this is a natural occurrence in a woodland setting as each tree competes for nutrients, water and light. Natural succession will occur, and it is inevitable that the more dominant species will take over and natural regeneration replace lost species.

- 4.4 In response to point three by Mr Bussey, an assessment/evaluation was made of the woodland using the Tree Evaluation Method for Preservation Orders (TEMPO). It is clear from the assessment that the woodland is highly suitable for a Preservation Order. As previously mentioned, the woodland has been considered for a Tree Preservation Order as a whole unit and not as individual trees.
- 4.5 In response to point four of the Mr Bussey JCA objection and Mr Stockton's first and third point of objection, the trees located along the River corridor are included in the Emergency Tree Preservation Order and are therefore currently already protected. The remainder of trees within the preservation order are a continuation of the River corridor habitat and provide a green wedge which is identified in the Council new Local Plan 2018-2035.

Regardless of the position in previous local plans, any application submitted, under Section 38(6) of the Planning and Compulsory Purchase Act 2004 and section 70(2) of the Town and Country Planning Act 1990, need to be determined in accordance with the current adopted development plan, unless material considerations indicate otherwise. The development plan for the borough is the Chesterfield Borough Local Plan 2018-2035 and this clearly identifies the site as open space and as part of a Green Wedge on the policies map (the yellow stripes, below).



Chesterfield Borough Local Plan 2018-2035.

Under policy CLP15 development proposals should not harm the character and function of the Green Wedge, the purpose of which is to:

- maintain open areas between parts of settlements within the urban area of Chesterfield to prevent them from merging;
- provide a 'Green Lung', penetrating from open countryside into an urban area;
- support recreational purposes which allow access from urban areas to the countryside and, where appropriate, contains informal and formal outdoor recreational facilities;
- maintain the existing or influence the form and direction of urban development.

Development of this site would contradict the purposes of the Green Wedge and conflict with the Council's newly adopted Local Plan.

At the present time no planning application has been submitted to the Council to develop the land but if one is received, the proposals and layout will be considered through the normal planning process and a decision made on the information provided and the affects the development will have on the protected trees within the woodland Order and Local Plan.

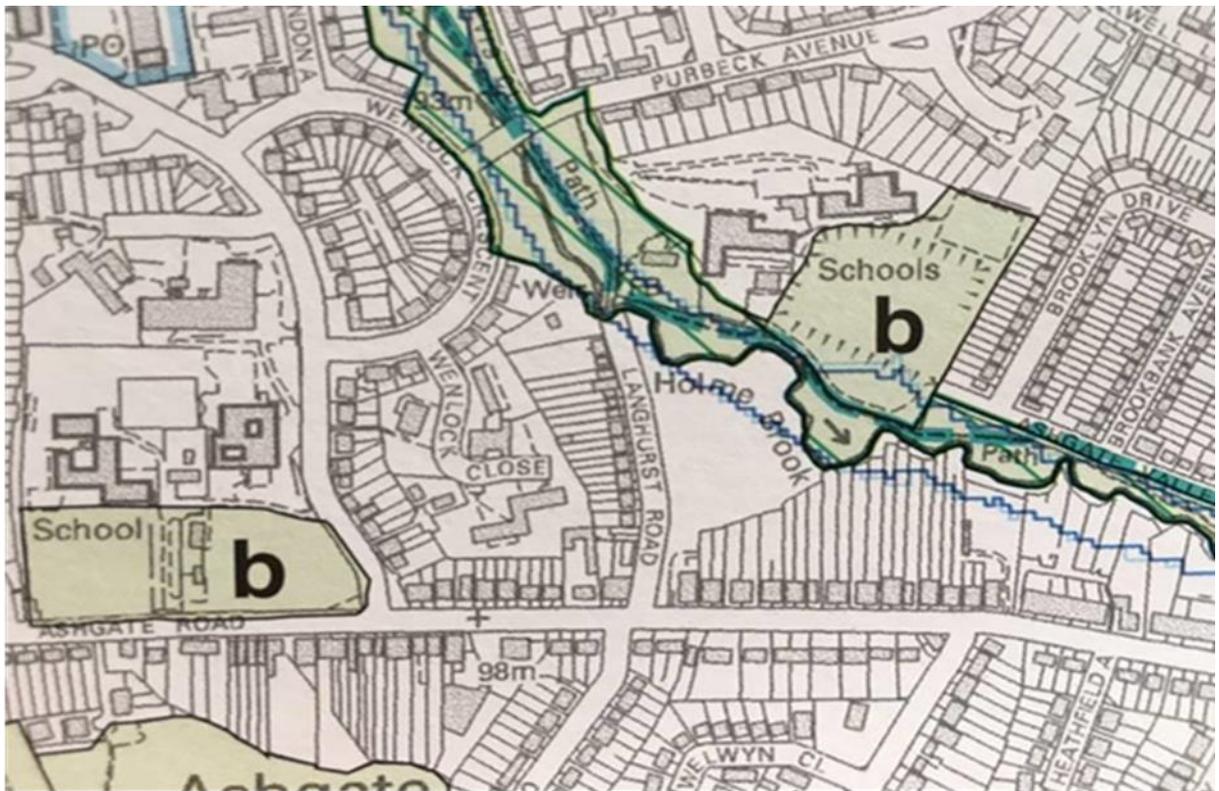
Development of this site would contradict the purposes of the Green Wedge and conflict with the Local Plan. Whilst noting the reference to flats and bungalows, the Local Plan does not identify this as a specific shortage and, even if this were the case, there is no evidence to suggest that such a need

is local to this area or could not be provided on other sites that are in accordance with the Local Plan. Further, shared ownership is not a form of affordable housing that is in particular demand in Chesterfield (the adopted plan only seeks 1 in 10 affordable units as shared ownership to reflect the low demand for this tenure). The borough is able to identify a five year supply of deliverable housing sites as required by the NPPF.

It is not therefore considered that these issues could be afforded any significant weight as material considerations that might outweigh the adopted planning policy. For the sake of clarity, previous Local Plans, including the 1996 Chesterfield Borough Local Plan, the 2006 Replacement Chesterfield Local Plan, the consultation on the Sites and Boundaries DPD (2012) and the draft Local Plan (2017) have been checked. The site does not appear to have been specifically allocated for housing, or included as a site for consultation, in any of those plans. In the 1996 Local Plan it was included within an area identified as 'primarily residential' but was not named as a specific housing site, and this designation was not carried through to later Plans'.



Chesterfield Borough Local Plan – 1996.



Replacement Chesterfield Borough Local Plan – 2006.



Sites and Boundaries Development Plan Document; Issues and Options Consultation – 2012.



Draft Chesterfield Borough Local Plan (for consultation purposes) – 2017. Showing proposed Green Wedge designation.

Finally, in response to Mr Stockton’s comments on Ash dieback, there is no evidence to suggest that the trees on the site are coming to the end of their lifespan due to the nature of the ground and Ash dieback. It is accepted that there are some trees of poor quality and condition, but this is a natural occurrence in a woodland setting as each tree competes for nutrients, water and light. Natural succession will occur, and it is inevitable that the more dominant species will take over and natural regeneration replace lost species. There is also no evidence that Ash dieback is having any effect on the tree cover and current advice is that any infected trees should not be removed unless they are a significant risk.

5.0 **SUPPORT FOR THE PRESERVATION ORDER**

- 5.1 An email of support for the Preservation Order was received from Alastair and Kate Weller on the 23rd September 2020 who described the trees as ‘*a beautiful part of the local landscape and form a lovely environment to live in, and to walk in*’. Alastair and Kate Weller also ‘*hoped that the decision will be taken to confirm the Order and give it permanent effect*’. The full email correspondence can be found in Appendix I.
- 5.2 A letter was also received from Miss Fran Collinge which is attached in Appendix J. Although, in principle Miss Collinge agreed with the Preservation Order, there were concerns regarding the poor maintenance of

the trees by the Owner and difficulties by Open Reach with their equipment. In response, a letter was sent on the 7th September 2020 which is attached in Appendix K. There is a telecommunications substation on the edge of the woodland which is accessed off Langhurst Road. It was confirmed to Miss Collinge that the owner remains responsible for trees covered by the preservation orders, their condition and any damage they may cause even though there is a Tree Preservation Order protecting them. It was also pointed out that the Preservation Order does not stop the trees being maintained or even felled but the authority's permission would usually be required before any work is carried out to the trees.

The tree application process is free of charge to encourage tree owners to apply for tree works and includes free arboricultural advice. In addition, guidelines allow the owner to give the Council 5 working days' notice if they believe a tree is dangerous. In this time, the Council will inspect the tree and give a formal decision on the notification, reducing the time to process an application which is normally 8 weeks under current Government guidelines.

Miss Collinge did enquire whether or not the Council could force the landowner to prune back the trees along the boundary as she thought some were unsafe. It was noted at the time of inspection that a few trees along the boundary were either dead or growing over the roadway which prompted the trees along the woodland edge being excluded from the Order so they can be maintained at any time without the consent of the Council. There is also an exemption in the TPO legislation that allows Utility Company's like Openreach to cut back trees without consent under certain conditions.

6.0 **RECOMMENDATION**

- 6.1 That the proposed modifications to the Order suggested by Mr J Stockton and Mr A Bussey are dismissed and overruled and the Tree Preservation Order be confirmed as made.

Appendices

- A Tree Evaluation Method for Preservation Orders (TEMPO)
- B Tree Preservation Order Site Plan
- C Photographs 1-8
- D Objection Letter Mr Bussey JCA Arboriculture Consultancy
- E Objection Email Mr Stockton
- F CBC Strategic Planning & Key Sites Manager's comments
- G Response letter to the Mr Bussey JCA objection
- H Response letter to the Mr Stockton objection
- I Alastair and Kate Weller email correspondence
- J Miss Fran Collinge letter
- K Response letter to Miss Fran Collinge

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