

## **Report to the Planning Committee**

**Location:** Newstead Abbey Park, Newstead, Nottinghamshire,  
NG15 8NA

**Proposal:** Newstead Abbey Park Woodland Tree Preservation Order

**Case Officer:** Lewis Widdowson

### **1.0 Purpose**

- 1.1. To request authorisation to confirm Tree Preservation Order No. 000141 'Newstead Abbey Park' without modifications and to revoke historic TPOs G0028 and G28B.

### **2.0 Background**

- 2.1. Earlier this year the Council received a number of complaints from local residents about unauthorised works to trees within Newstead Abbey Park. Newstead Abbey Park covers a large area which is currently protected by two historic Area Tree Preservation Orders, reference G0028 and G28B.
- 2.2. The existing Tree Preservation Orders (TPO) which protect Newstead Abbey Park, G0028 and G28B were first made on the 8th October 1976 and the 23rd August 1977 respectively.
- 2.3. An Area TPO seeks to protect all trees or a certain selection of species dispersed over an identified area. Area TPOs protect only trees which were present within the area at the time the Order was made. As a result Area TPOs are primarily intended for short-term protection and may not be capable of providing appropriate long term protection as maybe required in certain instances.
- 2.4. It is recommended that Local Planning Authorities carry out regular reviews of their TPOs to ensure that they are of the correct classification and provide appropriate levels of protection.
- 2.5. The historical TPOs referred to above had not been updated since they were made. Newstead Abbey Park covers a large wooded area which has changed significantly, both in terms of development and size since the historic TPOs were made.

- 2.6. In October 2020 an anonymous complaint was received by Gedling Borough Council that alleged unauthorised works were being carried out to several trees which were protected by the TPOs G0028 and G28B.
- 2.7. The Council's Planning Enforcement Officer and Arborist visited the site on the 28th October 2020 to investigate the complaint and established that a number of trees which existed prior to the making of the historic TPOs had been unlawfully removed.
- 2.8. Whilst investigating the alleged offence it was noted that the age and classification of the existing TPOs, G0028 and G28B, provided only a limited amount of protection to the trees within Newstead Abbey Park. It was also considered that the area which was deemed worthy of protection had significantly changed since the historic TPOs were made and that a review of the Orders should be undertaken.
- 2.9. Following an assessment of the Newstead Abbey Park TPOs, the Council's Arborist recommended that, given the extent of the land that the trees cover, and given the changes to the geography of Newstead Abbey Park, it was considered that a Woodland TPO would be more suitable for this setting. A Woodland TPO seeks to protect all trees and saplings growing within a woodland whether or not they were present at the time the TPO was made and it should not limit the species protected.
- 2.10. Having attended site the Arborist considered that it would also be justified to increase the extent of the TPO to incorporate a new section of woodland to the west of the existing Area TPO.
- 2.11. On 26th February 2021, further complaints were made to Gedling Borough Council, alleging additional trees had been marked for potential works within Newstead Abbey Park.

### **3.0 Provisional TPO**

- 3.1. The making of new TPOs is typically authorised at Planning Committee however, in this instance, any delay until the date of the next available Committee could have resulted in the loss of more trees. As a result it was considered expedient to utilise the Council's emergency scheme of delegation to quickly establish a new and up to date Provisional TPO for Newstead Abbey Park.

- 3.2. The Gedling Constitution gives delegated authority in emergency situations to officers, in conjunction with the Chairman / Vice Chair of Planning Committee, to revoke, vary and replace Tree Preservation Orders. Notwithstanding the above, any new TPO must be considered by Planning Committee prior to being confirmed.
- 3.3. The Head of Development and Place, and Chair of Planning Committee were consulted on the 25<sup>th</sup> February 2021 and authorisation was given to proceed with the making of a Provisional TPO.
- 3.4. Gedling Borough Council made the Provisional TPO, reference 000141, on the 2<sup>nd</sup> March 2021. In accordance with the Town and Country Planning Tree Regulations 2012, the Council served a copy of the notice on the owners and occupiers of the land directly affected by the TPO. Interested parties had until the 14<sup>th</sup> June 2021 to submit any representations to the Council which would then be taking into consideration when deciding whether to confirm the TPO.

#### **4.0 Consultation**

- 4.1. In total three representations were submitted in response to the consultation. The main comments raised are summarised below:
  - At what point does a new growth become a tree and is the removal of self-seeded intruders illegal?
  - Hedgerows need regular maintenance, do these works require permission under the TPO?
  - Understands that the Original TPO excluded new and young growths up to 150mm diameter to enable management. Does this proviso remain in force?
  - Throughout the woodland *Leylandii* have been planted which are an intrusive species. Is the Order intended to protect recently planted alien species?
  - Proud to protect the woodland but do not consider it appropriate to have to apply for ongoing maintenance works expected under reasonable husbandry.
  - Fully supports the preservation of the area of Newstead Abbey.

- Several trees within grounds are unhealthy and a subsequent report details them as dead, diseased and dying which should allow works to take place to make them safe.
- An independent arboricultural report has been commissioned by a resident of one of the dwellings and its associated curtilages within Newstead Abbey Park. The report is focused only on the land in question and does not consider the rest of Newstead Abbey Park. The report argues that the curtilage of the dwelling is open and as such it would be inappropriate to classify this land as 'Woodland'.
- The TPO reference 000141 should therefore be modified to remove this dwelling and its curtilage from the protection of the TPO. Should it be considered necessary to protect any trees within the curtilage of the dwelling it would be appropriate to do so using individual or group classifications.
- The protection of trees in relation to this dwelling would be indefensible and not expedient in the interest of amenity.

## **5.0 Consideration**

- 5.1. The Government Guidance, Tree Preservation Orders: A Guide to the Law and Good Practice confirms that Woodland TPOs are designed to protect the trees and saplings of whatever size within the identified area, including those planted or growing naturally after the Order was made. This is because the purpose of the Order is to safeguard the woodland as a whole, which depends on regeneration or new planting. With the above in mind all trees, whether self-set saplings or existing mature trees, within the defined woodland would be protected under The Town and Country Planning (Tree Preservation) (England) Regulations 2012. The order would not achieve its purpose if it applied only to the trees existing at the date it was made.
- 5.2. It is advised that, whilst individual trees which collective form a hedge can be protected under a TPO, hedgerows themselves are not protected under the above regulations but instead through the Hedgerows Regulations 1997. Similarly TPOs cannot be used to protect bushes and/or shrubs.
- 5.3. Having regards to the comment addressing the classification of the TPO, and the sparsely wooded curtilages of one of the properties within the grounds of

Newstead Abbey Park, I remain satisfied that the Woodland classification for this TPO is appropriate in this instance. Whilst I accept that there may be certain areas of Newstead Abbey Park that are less populated with trees than others, I am mindful that they are all included within and help form the wider woodland at Newstead Abbey Park. Whilst the term Woodland is not specifically defined within the TPO regulations it is clear that the aims of a Woodland TPO is to protect the 'Woodland Unit as a whole'. This is in keeping with the tenet of a Woodland TPO as set out in *Palm Developments Ltd v Secretary of State for Communities and Local Government* [2009] EWHC 220 (Admin) decision 13/2/2008, that the intention of a woodland TPO is to not only protect the trees, but to ensure the preservation of the woodland system as a whole.

- 5.4. The Arboricultural Report which was submitted to support the above comment states that it has only been produced in relation to one specific property. This is to view and assess the curtilage of the property in isolation and does not take the wider context of the site into consideration. In any given Woodland it would not be uncommon for there to be more sparsely populated areas, however I consider that these areas would still contribute to the woodland unit and allow for new self-setting trees to flourish in accordance with the aims of a Woodland TPO.
- 5.5. Whilst I appreciate that the requirement to obtain permission for maintenance works to trees within the Woodland TPO may seem onerous I consider it integral to the purposes of the Woodland TPO. In addition to the above I note that there is currently no fee to apply for works to protected trees which do not therefore result in affected landowners being financially penalised.

## **6.0 Proposed Action**

- 6.1. Taking the above into consideration, I am satisfied that the Woodland TPO reference 000141 at Newstead Abbey Park is appropriate and has been made in accordance with The Town and Country Planning (Tree Preservation) (England) Regulations 2012. I am satisfied that the TPO reference 000141 is wholly justified in terms of the Amenity provided by the Woodland and that the woodland in its entirety should remain protected to ensure that the woodland as a whole is preserved in accordance with Government Guidance. I therefore

recommend that the Order is confirmed without modifications and interested parties are notified of the Councils decision.

- 6.2. Once the Woodland TPO has been confirmed the historic TPOs reference G0028 and G28B will have been superseded and as such shall be revoked in the interest of clarity.

## **7.0 Recommendation**

- 7.1. Confirm Tree Preservation Order - 000141 'Newstead Abbey Park' without modifications and revoke TPOs G0028 and G28B.