

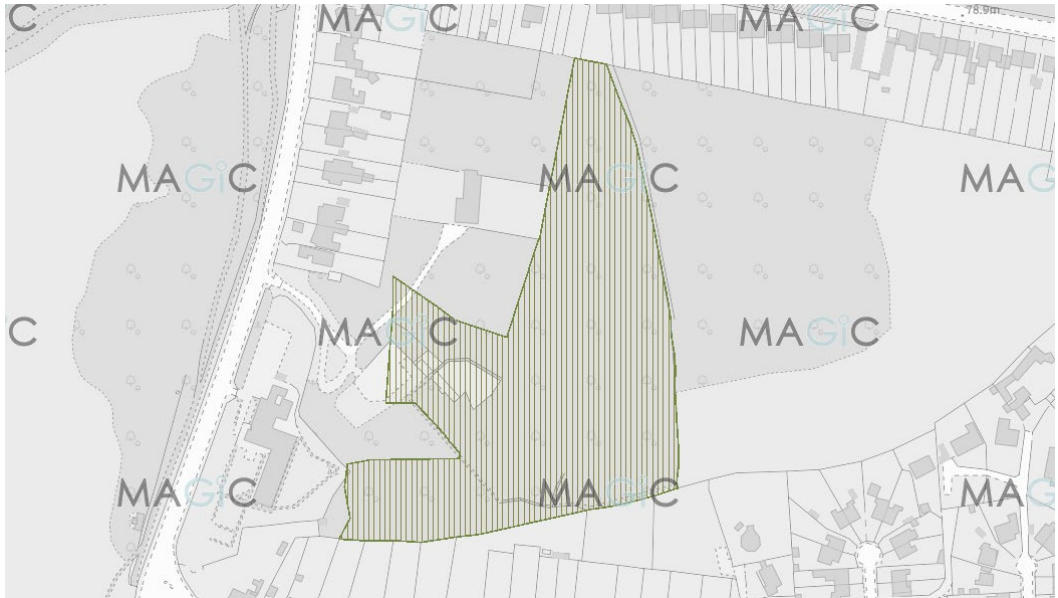
Committee Report – Tree Preservation Order Application P/2023/00964

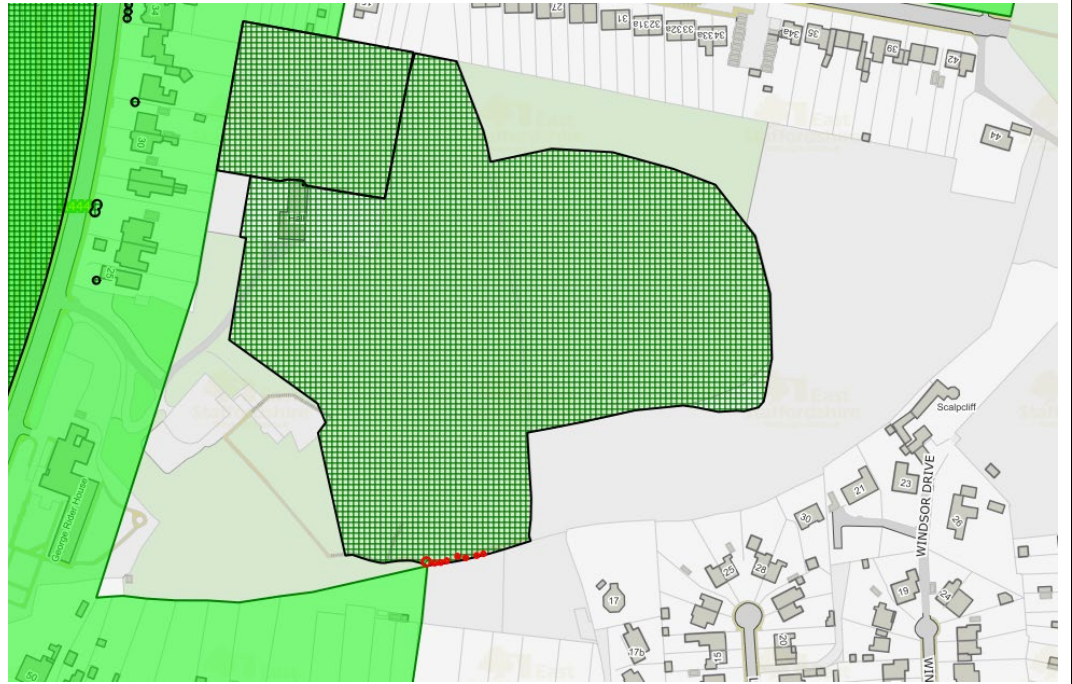
This report has been checked on behalf of Legal Services by John Teasdale

Application Number	P/2023/00964	
Planning Officer	Paige Stanley	
Site Address	Trees to the Southern Boundary of Scalpcliffe Woods, Stapenhill, Burton upon Trent , Staffordshire,	
Proposal	Remove overhanging limbs back to appropriate points of two Sycamore trees (T1 and T4) and one Ash tree (T7), remove overhanging limbs back to appropriate points and removal of ivy from two Sycamore trees (T5 and T6) and felling of two Holly trees (T2 and T3) and one Sycamore tree (T8) (W1 of TPO403)	
Recommendation	Approve with conditions	
Expiry Dates	Weekly List	06/11/2023
	Neighbours	02/11/2023
	Consultations	02/11/2023
	Site Notice	02/11/2023
	Newspaper Advert	N/A
Application not Determined within Statutory Time Period - Reason	Extension of time agreed until 10 th November 2023 while the Ancient Woodland status was investigated, no further extension of time agreed.	
Reason for being on the Agenda	Application called in by Cllr Bernard Peters due to concerns in relation to the Ancient Woodland designation.	
Environmental Assessment	Screening opinion undertaken	No
	Schedule 1 or 2	No
	EIA Required	NA
Relevant Planning Policies/Guidance	Government Documents	The Town and Country Planning Act 1990 (as amended). The Town and Country Planning (Tree Preservation) (England) Regulations 2012. The National Planning Policy Framework (particularly Paragraphs 8 and 127, and Section 15). The National Planning Practice Guidance.
	Local Plan Policies	DP8: Tree Protection.
	Supplementary Planning Documents	None
	Other Policies/Guidance	BS 3998 2010 – British Standard: Tree Works - Recommendations
Relevant History	Most recent tree works and planning applications along Clay Street and within Scalpcliffe Woods: <u>Scalpcliffe Woods Nature Reserve:</u>	

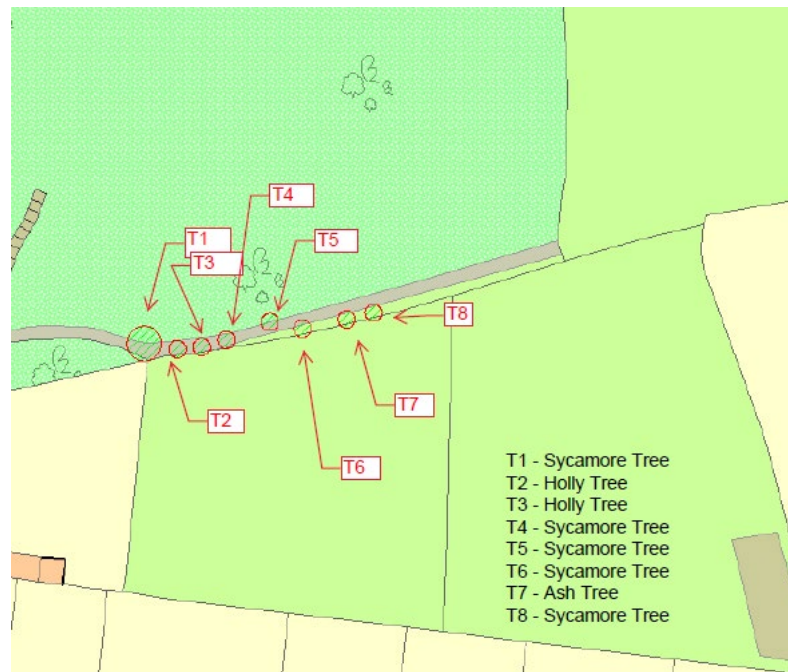
	<ul style="list-style-type: none"> • TP/25661/001 – Removal of 29 sycamores (W2 of TPO No. 1) to create two clearings as part of woodland management scheme – Approved 02/02/2000 • P/2017/00724 – Felling of 1 ash (<i>Fraxinus excelsior</i>) (T1) and removal of 1 limb from one ash tree (<i>Fraxinus excelsior</i>) (T2) (TPO 1) – Approved 26/07/2017 • P/2017/01208 – Fell one Horse Chestnut tree and remove limb from one Ash tree (TPO 1) – Approved 07/11/2017 <p><u>2 Clay Street:</u></p> <ul style="list-style-type: none"> • P/2012/01110 – Crown reduction by 50% of 1 willow tree and 40% from 2 conifer trees – Approved 02/10/2012 • P/2021/00033 – Pollarding of 4 lime trees – Approved 08/02/2021 • P/2023/01183 – Pollard to reduce the canopy by up to 40% of one weeping willow tree (T1) – Approved 24/11/2023 <p><u>3 Clay Street:</u></p> <ul style="list-style-type: none"> • P/2012/00331/SS – Felling of 1 cherry and 1 beech tree – Refused 27/04/2012 • P/2015/01419 – Crown reduction in height by 25% and removal of 1 trunk from 1 laurel and crown reduction by 50% of 1 Japanese maple tree – Approved 25/11/2015 • P/2021/00408 – Felling of 1 holly which forms part of a hedge to allow the re-alignment of wall due to damage – Approved 30/04/2021 <p><u>6 Clay Street:</u></p> <ul style="list-style-type: none"> • P/2020/01116 – Felling of 2 Copper Beech trees (T1 and T4) and crown reduction by 2m to 1 Copper Beech tree (T2) – Approved 24/11/2020 • P/2023/00067 – Felling of ash tree (T24) – Approved 03/03/2023 <p><u>Rear of 11 Clay Street:</u></p> <ul style="list-style-type: none"> • P/2022/01033 – Erection of 4 detached dwellings – Refused 24/01/2023
<p>Consultation Responses</p>	<p>ESBC Tree Officer – No objection in principle, however, it is recommended that the limbs and small trees to be removed are marked for identification purposes to avoid any confusion as to the extent of the works required to clear the fence line. It is also considered that the works to simply clear the fence line will not allow the trees to be pruned in accordance with BS 3998 2010 as they potentially would involve intermodal reduction as opposed to pruning back to appropriate points. This is often the situation where the applicant is utilising a common law right.</p> <p>Following a site meeting with ESBC Open Spaces and the Case Officer the ESBC Tree Officer was consulted again and confirmed that any ambiguity in terms of the proposed works has been removed by virtue of the amended plan and photographs provided. The pruning and removal of the trees in question will have a minimal impact on public visual amenity and if carried out in accordance with BS 3998 2010 have limited impact on the physiology of the trees concerned. There are therefore no objections to the amended proposals.</p> <p>Natural England – Have not commented directly on the proposals but have confirmed that the Ancient Woodland plotted on the DEFRA Magic Map is due to be reduced in size. This is part of the Ancient Woodland Inventory (AWI) that is currently being undertaken and is due to be completed in 2025.</p>
<p>Brizlincote Parish Council</p>	<p>No response received within the statutory consultation period.</p>

<p>Neighbour Responses</p>	<p>Objections have been received from 11 local residents, these are summarised below:</p> <ul style="list-style-type: none"> • The application states that the trees are neither dangerous nor diseased therefore there is no reason for works to be carried out other than for the fence to be installed. • The trees are subject to a TPO which is to protect them from deliberate damage and destruction including felling, lopping and uprooting. • If the trees were considered important enough to protect in the first place they should not be allowed to be removed for the sake of a fence which could be installed in a different position. • The destruction of viable trees is not good for the environment. • Removal of the trees could cause possible land slide from the historic woods. • Allowing the trees to be removed would set a precedent to allow further destruction of the woodland. • The trees border a conservation area and removal of them would impact on the appearance of the conservation area. • The trees are within an area of Ancient Woodland and are within a nature reserve as identified by DEFRA and Natural England. The trees have absolute protection by law and the Council are breaking the law and ignoring residents' concerns and advice from Natural England. • Ancient Woodland is irreplaceable habitat and the NPPF states: <i>'development resulting in the loss or deterioration of irreplaceable habitats (such as ancient woodland and ancient or veteran trees) should be refused, unless there are wholly exceptional reasons and a suitable compensation strategy exists'</i>. • A number of protected species use the trees as habitat, and the trees form part of an important ecosystem. • The trees have not been surveyed for protected species • Trees have a positive effect on the environment and the loss of any should be avoided unless they cause a danger to surrounding buildings. • No objection to the removal of branches from the trees and bushes which overhang the boundary, however, the proposed felling, height reduction and removal of limbs from trees T2, T3, T5, T7 and T8 do not appear to be necessary if they are not overhanging. • Healthy trees should be nurtured not needlessly removed. • If permission is granted to fell trees will the applicant be required to plant replacements and be responsible for long term aftercare? • If permission is granted it is requested that the works be undertaken by the appropriate Council contractors. <p>The following issues were also raised, however, these are not material planning considerations and cannot be considered in the determination of this application:</p> <ul style="list-style-type: none"> • The motive for the works is questioned given the previous refusal for 4 dwellings • No boundary survey has taken place by a qualified surveyor as the route of the fence proposed does not follow the boundary line between the properties on Clay Street and Scalpcliffe Woods. • • The buffer zone to the ancient woodland having already been removed <p>Concerns were also raised in respect of the address of the application site being incorrect, the species of the trees and description of works – these issues have been addressed during the course of the application and interested parties have been re-consulted.</p>
<p>Human Rights Act Considerations</p>	<p>There may be implications under Article 8 and Article 1 of the First Protocol regarding the right of respect for a person's private and family life and home, and</p>

	<p>to the peaceful enjoyment of possessions. However, these issues have been taken into account in the determination of this application.</p>
<p>Crime and Disorder Implications</p>	<p>It is considered that the proposal does not raise any crime and disorder implications.</p>
<p>Equalities Act 2010</p>	<p>Due regard, where relevant, has been given to the East Staffordshire Borough Council's equality duty as contained within the Equalities Act 2010.</p>
<p>Planning Officer's Assessment</p>	<p><u>Site and Surroundings</u></p> <p>This application relates to trees situated along the southern boundary of Scalpcliffe Woods which forms the northern boundary to properties on Clay Street. The trees affected are five sycamore trees, one ash tree and two holly trees which are protected by virtue of Tree Preservation Order (TPO) No. 403. TPO 403 was made in February 2020 and confirmed in August 2020 following a review of existing TPO's. In effect this replaced TPO No. 1 (Shobnall and Stapenhill) which was originally made in February 1950, with the Shobnall and Stapenhill woodland areas it covered being separated out into two individual TPO's. TPO 403 covers a woodland area identified as W1 within the TPO, no individual trees are identified.</p> <p>The applicant does not own the trees in question, with Scalpcliffe Woods being in the ownership of East Staffordshire Borough Council and managed and maintained by the Open Space's Team. The application has been made due to the subject trees overhanging the neighbouring land which is within the applicants' ownership.</p> <p>The DEFRA Magic Map identifies the trees as being situated within an Ancient and Semi-Natural Woodland, indicated on the extract below:</p>  <p>The extract from the Council's Online Mapping service below, indicates TPO No. 403 in the dark green hatched area (the dark green hatched square is a separate TPO) with the lighter green area being the nearby Conservation Area and the trees shown in red:</p>



Position of the protected trees the subject of this application



Proposals

Consent is sought for the following tree works:

- Remove overhanging limbs back to appropriate points of two sycamore trees (T1 and T4) and one ash tree (T7)
- Remove overhanging limbs back to appropriate points and removal of ivy from two sycamore trees (T5 and T6)
- Felling of two holly trees (T2 and T3)
- Felling of one sycamore tree (T8)

Negotiations have taken place during the course of the application and an amended site address was agreed, along with a clearer description of the proposed works and tree species as set out above.

ASSESSMENT

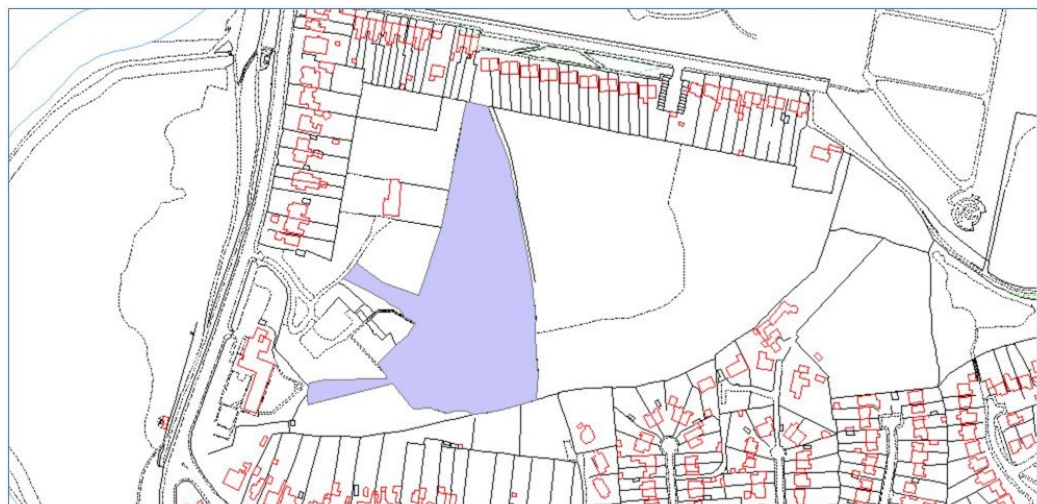
Paragraphs 8 and 130, and Section 15 of the National Planning Policy Framework recognise the planning system's role in contributing to protecting and enhancing the natural environment.

The National Planning Practice Guidance states that in considering an application to undertake works to protected trees, the local planning authority should assess the impact of the proposal on the amenity of the area and whether the proposal is justified, having regard to the reasons and additional information put forward in support of it. It should also consider whether any loss or damage is likely to arise if consent is refused or granted subject to conditions, and whether any requirements apply in regard to protected species.

Local Plan Policy DP8 states that felling of protected trees will only be granted consent where either the tree is in poor health and/or has lost its intrinsic visual amenity value, or where the tree is causing demonstrable harm to the structural integrity of a building or other built form, and the harm cannot be remedied by other reasonable means.

DP8 states that works to protected trees will only be granted consent where the tree is of public visual amenity value and the works would not adversely affect the appearance of the tree and the contribution it makes to the visual amenity of the locality.

During the course of the application clarification from Natural England has been sought regarding the specific boundary of the Ancient Woodland designation. Natural England have confirmed that the Ancient Woodland area is due to be reduced in size and would remove part of the area adjacent to the southern boundary of Scalpcliffe Woods and Clay Street to the west of the application site, the area provided by Natural England is shown below (note – this has not yet been published on Magic Map):



The extracts below indicate that the affected trees would still be situated within the Ancient Woodland area:



The Ancient Woodland status of the trees does not prevent the Local Planning Authority from making a decision in respect of the tree works. The Natural England Standing Advice states that the LPA should assess the direct and indirect effects of *development* on ancient woodland and ancient and veteran trees. The National Planning Policy Framework also outlines that *development* which results in the loss or deterioration of irreplaceable habitats, such as ancient woodlands, ancient and veteran trees should be refused unless there are wholly exceptional reasons, and a suitable compensation strategy exists.

It is noted that the proposed works to the trees are due to their status as TPO'd trees and not due to any development proposed, therefore the guidance in the NPPF and the Natural England Standing Advice does not apply in this instance. Furthermore, whilst it is noted that a fence is proposed along the boundary, this falls within the remit of 'permitted development' and does not require an application to be submitted to, or assessed by, the Local Planning Authority.

The works to the trees and proposed felling is considered acceptable in this instance. Whilst within the ancient woodland the trees in question are not ancient or veteran trees. It is not considered that the works would harm the setting of the conservation area given the large number of other trees in the vicinity – the backdrop of the conservation area is still one which is heavily wooded.

During the course of the application the description of the development has been amended and the trees have been marked up to show the limbs and trees proposed to be removed. The proposals originally included cutting the limbs back to the boundary line, however, this is not considered to be good practice as it would involve intermodal reduction. According to BS 3998 2010 limbs should be removed back to nodal points to prevent any adverse impact to the health of the affected trees. Therefore the amended proposed works do encroach over the boundary into the woodland, as agreed with the Open Spaces Team who have raised no objections or concerns in respect of the proposals.

The ESBC Tree Officer has assessed the proposals, as amended, and has confirmed that there are no objections subject to the works being carried out in accordance with BS 3998 2010 and in accordance with the amended plan submitted and photographs provided. The Tree Officer considered that the proposed works, including felling, will have a minimal impact on public visual amenity with the remaining works having a limited impact on the physiology of the trees concerned.

In relation to comments made by local residents, the placing of a TPO does not mean that no works can be carried out, rather it means that a formal application is required for works, to enable the Local Planning Authority to assess the impact on the trees and their visual amenity value. It should be noted that works for the

	<p>management and maintenance of areas of woodland are expected, and it is good arboricultural practice to have a management plan in place.</p> <p>It is not a requirement of the TPO legislation for applications for tree works to be accompanied by protected species assessments, in this case the applicant is to be reminded of their ecological responsibilities via a suitably worded informative. This means that works should not be undertaken if the trees are being used by birds or bats for nesting.</p> <p>Concerns were raised that a precedent would be set should the works be allowed. It is noted that all applications for tree works are dealt with on their own merits and assessed individually.</p> <p>The Council's Open Space Team have confirmed that the applicant is to arrange for the tree works to be undertaken and will allow access to the site for that purpose. The works will need to be undertaken by a qualified arborist in accordance with BS 3998 2010.</p> <p>As the trees subject of this application are part of a TPO it is considered reasonable to secure replacement trees for those proposed to be felled (two holly trees and one sycamore tree). The Council's Open Spaces Team have confirmed that they will be able to accommodate the planting of suitable replacement trees. The replacement trees are therefore proposed to be secured via a suitably worded condition.</p>
<p>Planning Officer's response to Parish Council</p>	<p>No response required.</p>
<p>Conclusion</p>	<p>The proposed work will not adversely affect the amenity value of the trees or the surrounding area and is therefore in accordance with the National Planning Policy Framework and Practice Guidance, and Local Plan Policy DP8 (where relevant).</p>
<p>Section 106 required?</p>	<p>N/A</p>
<p>Recommended Conditions</p>	<p>1: Time Limit – TPOs</p> <p>The works hereby granted consent shall be carried out within two years from the date of this consent.</p> <p>Reason: To conform with Section 17(4)(a) of the Town and Country Planning (Tree Preservation)(England) Regulations 2012.</p> <p>2: Tree Works Standard</p> <p>The works shall be carried out in accordance with BS.3998.2010 (tree work) and in accordance with the submitted photographs and amended plan received on the 9th October 2023.</p> <p>Reason: To safeguard the appearance and future well-being of the trees in the interests of the visual amenity of the area and in accordance with East Staffordshire Local Plan Policy DP8 and the Town and Country Planning (Tree Preservation) (England) Regulations 2012 and the National Planning Policy Framework.</p> <p>3: Replacement Tree(s)</p>

	<p>Following the removal of the trees, replacement trees of the same species (i.e. two holly trees and one sycamore tree), which are of select standard (10-12cm girth) , shall be planted within Scalpcliffe Wood within the same, or immediately following, planting season (October to March). The Local Planning Authority shall be notified of the position of the trees within the woodland TPO area within one month of the date of them being planted.</p> <p>Reason: To safeguard the visual amenity of the area and in accordance with East Staffordshire Local Plan Policy DP8 and the Town and Country Planning (Tree Preservation) (England) Regulations 2012 and the National Planning Policy Framework.</p>
Recommended Informatives	<p>1: Ecological Responsibility - Tree Applications</p> <p>The applicant is advised that this consent does not override any obligations in respect of protected species under relevant wildlife legislation. In particular, trees can provide a habitat for nesting birds and bats which are protected species. It is a criminal offence to wilfully cause harm to either. The works should therefore be carried out outside the bird nesting season, and if bats are known to be using the trees as a roost, or are discovered during the carrying out of the works, a competent ecologist should be employed to ensure the bats are safeguarded.</p>
Officer Details	<p>Paige Stanley Tel 01283 508644 Paige.stanley@eaststaffsbc.gov.uk</p>