

COMMITTEE REPORT

EAST AREA PLANNING COMMITTEE

4 February 2015

Order Name: Oxford City Council – Abberbury Road (No.1) Tree Preservation Order, 2014

Decision Due by: 30th April 2014

Site Address: Land at 10 and 18 Abberbury Road, Iffley, Oxford

Ward: Rose Hill and Iffley

Recommendation:

To confirm the Oxford City Council – Abberbury Road (No.1) Tree Preservation Order, 2014 without modification.

Background:

The Oxford City Council – Abberbury Road (No.1) Tree Preservation Order, 2014 was made on 11th September 2014. It is an 'Area' designation Order, which includes and protects all trees at 10-18 Abberbury Road situated within the dotted line marked on the Tree Preservation Order (TPO) plan.

The TPO was made in response to officers' concerns regarding the possible development intentions of parties with an interest in the land; concern related to the risk of pre-emptive site clearance and removal of trees prior to any planning application.

Reasons for making order:

1. To protect in the interest of amenity, trees that make a significant contribution to amenity in public views gained from Abberbury Road.
2. In order to provide interim legal protection to important amenity trees that are considered to be under threat from removal; to ensure tree issues are not circumvented in the planning process.

Relevant Site History:

There had been no recent planning history on the site since 1957.

Representations Received:

One representation in objection to the TPO, and one making critical comments about the form of the TPO have been received. The objection is from a party with an ownership interest in the land, Sarah Schwab of Clauchendolly, Borgue, Kirkcudbright, Dumfries and Galloway, Scotland. The letter of critical comment is from S.J. Stephens, an arboricultural consultant, acting for Carter Jonas LLP; their client is not disclosed.

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Officers Assessment:

Site:

The site stands on the eastern fringe of Iffley village outside of the boundary of the Conservation Area (see Appendix 1). The site comprises the gardens of No.s 10 Abberbury Road (built in 1957) and 18 Abberbury Road (built in 1927). The whole site once formed the grounds of the older house, but the land was subsequently sub-divided with the formation of the new property. Abberbury Road is an attractive residential area, where the properties benefit from a tree lined street and large private gardens both front and rear. No. 18 Abberbury Road is unique in the road by having a particularly expansive garden.

Trees and their amenity:

In public visual amenity terms the most significant trees are those that contribute to the street scene along Abberbury Road. This includes some large trees set back from the road, which contribute to the skyline (see Appendix 5). The tree cover comprises a mixture of native and exotic species, both deciduous and coniferous, including birch, a copper beech, Lawson cypress, spruce and fir. The site includes some trees that are not in very good condition, or of any particular individual merit, as well as some fine specimens; collectively, the tree cover contributes positively to the attractive sylvan character of the area.

Public Comments: S. J. Stephens Associates

Mr Stephens, an arboricultural consultant acting for Carter Jonas LLP asserts the opinion that an 'Area' designation TPO is inappropriate because it includes a large number of trees of poor quality, and that the Area Order creates a disincentive to good management of the trees. He suggests that it would be better practice to have a TPO that included only individual trees of high merit instead. He identifies two trees that in his opinion definitely warrant TPO protection and a further 11 trees that are in reasonable condition and which might justify inclusion in the TPO. Mr Stephens' letter is reproduced at Appendix 2.

Officer's response to comments:

Officers broadly agree with Mr Stephens' quality categorisation assessments of the site's tree stock. In principal officers also agree that a TPO drafted in an individual Order designation format would be preferable as a long term measure; however, officers contend that there are justifiable reasons for the initial making of the existing provisional TPO as an Area Order, and for confirming it in that form.

The 'Area' designation was employed because in the context of possible development of the site, the Area TPO is non-specific as a design constraint, whilst preventing any preemptive tree removals prior to planning permission being gained. Government guidance (currently contained within Planning Practice Guidance- Tree Preservation Orders and trees in conservation areas) (relevant extract reproduced at Appendix 3) affirms that use of Area designations are appropriate for such circumstances, ideally as a temporary measure. The Area TPO could be replaced by an Individual designation TPO once a specific development proposal has a planning consent if this occurs.

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In regard to Mr Stephens concern that an Area TPO would be a disincentive to good arboricultural management of the site, officers assert that the TPO simply creates a planning control, which requires that anyone wishing to carry out any works to the trees must obtain the written consent of the Council as Local Planning Authority. Essentially the TPO enables the Council to prevent the removal of the trees, or any other forms of works that would be harmful to public visual amenity, without there being good reason. Each TPO application is judged on its individual merits, taking into account the impact of the proposal balanced against reasons provided in justification of the works. Applications under the TPO are free and can be made at any time. A refused application, or conditions imposed on a consent which the applicant considers to be adverse, can be appealed to the Planning Inspectorate. In determining TPO applications the Council follows relevant aspects of the aforementioned Government guidance on TPOs.

Public Comments: Sarah Schwab

Sarah Schwab has an ownership interest in the site; she is understood to be one of a number of beneficiaries of an estate that includes No.s 10 and 18 Abberbury Road. Ms Schwab's objection is reproduced in full at Appendix 4, and the main points are summarised as follows;

1. The site is outside the Iffley village conservation area.
2. Many trees, especially cypresses, have become over large and unattractive.
3. The TPO hinders appropriate development of the site into three additional units.
4. The site was planted-up in the 1930's and many of the trees are not native.
5. Some trees are in poor condition and require management/removal.
6. The trees make the area unwelcoming and vulnerable to crime.

Officer's response to Comments:

1. The site is indeed outside of the conservation area. This means that trees on the site only enjoy legal protection by virtue of the provisional TPO; officers contend that this point supports the confirmation of the TPO.
2. Officers disagree that trees have become unattractive as a result of growing old; rather that the amenity of the area benefits significantly from their size and maturity.
3. The TPO does not hinder appropriate development of the site; in respect of a full planning permission a TPO does not apply; trees may be removed as necessary to implement an approved development.
4. The date of garden establishment, or the native/exotic status of the trees, are not relevant considerations in terms of assessing the public visual amenity contribution made to the street scene.
5. Some trees are in a poor condition. However the provisions of the TPO allow for works necessary to remove imminent hazards to be carried out without a TPO application. Other works can be done with TPO consent; only works causing a significant adverse impact to amenity without good reason would be refused.
6. Officers disagree that the trees make the area unwelcoming and vulnerable to crime; no evidence is produced in support of this contention. Furthermore the TPO is not intended to prevent site management or landscape improvements.

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Conclusion:

The trees covered by the TPO collectively make a significant positive contribution to the public street scene along Abberbury Road. The TPO does not hinder appropriate development of the site. Trees are a material consideration in the planning process whether they are legally protected or not. The TPO simply prevents their preemptive removal as a constraint.

Recommendation:

Taking into account the objections that have been received to the order, officers recommend that the Oxford City Council – Abberbury Road (No.1) Tree Preservation Order, 2014 be confirmed without modification.

Human Rights Act 1998

Officers have considered the implications of the Human Rights Act 1998 in reaching a recommendation to confirm this Tree Preservation Order with modifications. They consider that the interference with the human rights of the land owner under Article 8/Article 1 of Protocol 1 is justifiable and proportionate for the protection of the rights and freedom of others or the control of his/her property in this way is in accordance with the general interest.

Section 17 of the Crime and Disorder Act 1998

Officers have considered, with due regard, the likely effect of the proposal on the need to reduce crime and disorder as part of the determination of this application, in accordance with section 17 of the Crime and Disorder Act 1998. In reaching a recommendation to confirm this Tree Preservation Order with modification, officers consider that the proposal will not undermine crime prevention or the promotion of community safety.

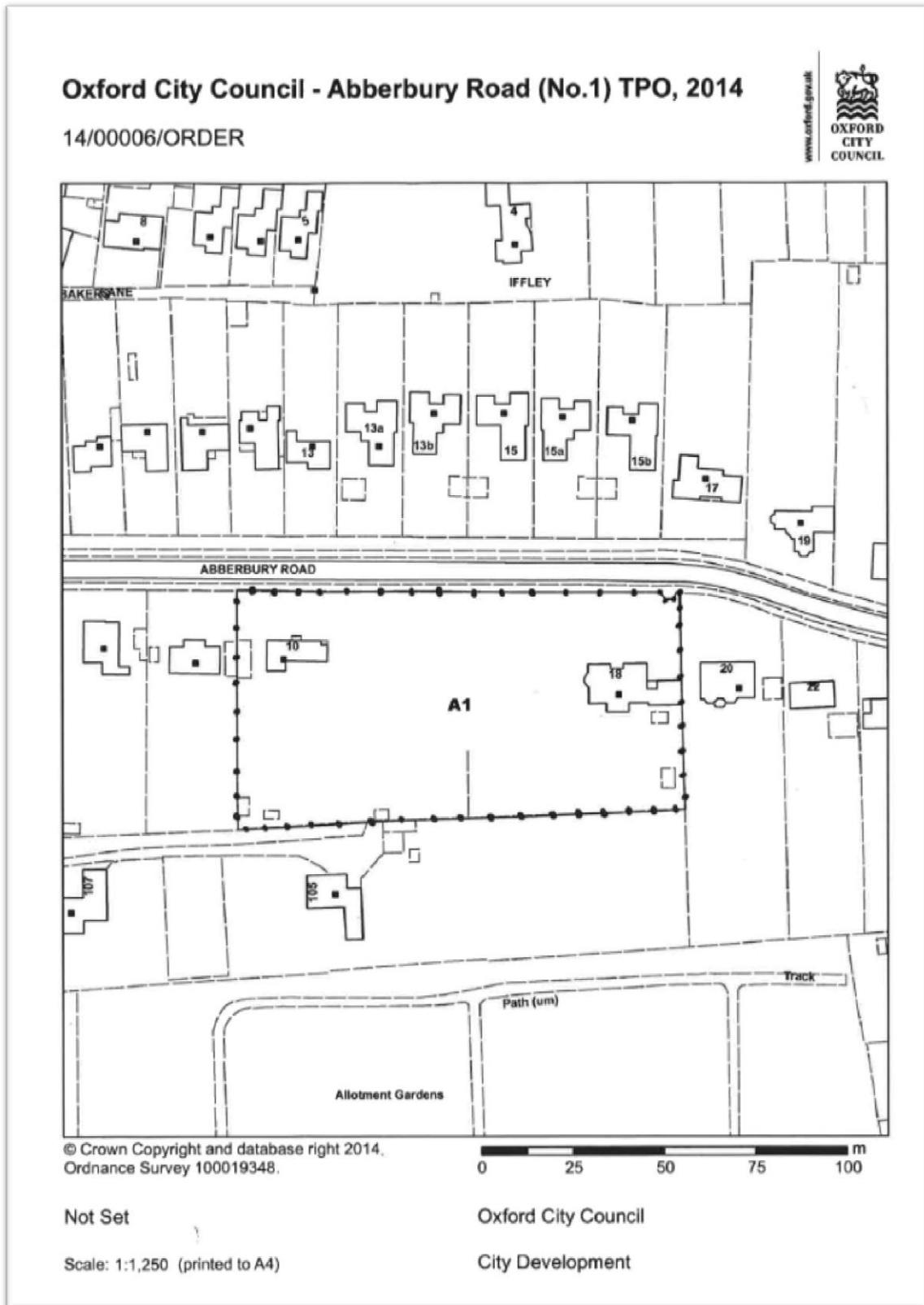
Background Papers:

1. Oxford City Council – Abberbury Road (No.1) Tree Preservation Order, 2014.
2. Sarah Schwab; Letter of objection to TPO.
3. S.J. Stephens Associates; Arboricultural Consultant. Tree condition survey and cover letter including comments TPO.

Contact Officer: Chris Leyland

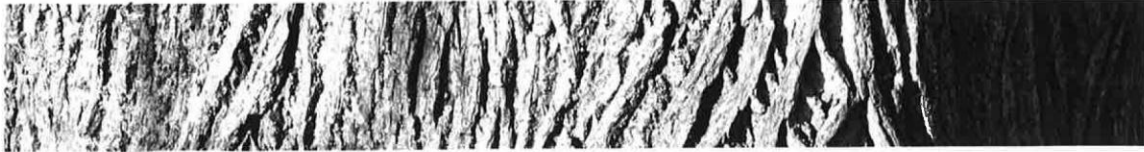
Extension: 2149

Date: 6th January 2015



Oxford City Council – Abberbury Road (No.1) Tree Preservation Order, 2014- Map

Public Comments: S. J. Stephens Associates



SJ Stephens Associates

ARBORICULTURAL, LANDSCAPE & MANAGEMENT CONSULTANTS

Michael Crofton-Briggs
Business Manager
City Development – Planning Control and Conservation
Oxford City Council
St Aldate's Chambers
109 – 113 St Aldate's
Oxford OX1 1DS

Your ref: 14/00006/ORDER

8th October 2014

Dear Sir,

Ref: Placing of a Provisional Tree Preservation Order on land between and including nos 10 and 18 Abbebury Road

Carter Jonas LLP have asked me to assess trees on the site and to consider whether the placing of an Area Tree Preservation Order is justified.

I have therefore surveyed trees on the site and attach a plan and tree schedule showing my findings.

The majority of trees have reached maturity and are in various states of decline. Photos are attached showing windblown and fallen conifers. The predominant species are lawson cypress, douglas fir and the purple plum, *Prunus pissardii*. Very little management appears to have been undertaken over the last 10 years and the gardens are in need of complete renovation, clearing poor quality trees, which are providing negligible amenity value, to make way for new planting.

There are very few trees that are of sufficient quality to justify a Tree Preservation Order. The principal exceptions are T30, a cedar and T50, a copper beech, which are both fine, mature trees which certainly warrant protection.

In addition, there are eleven other trees (T4, T8, T13, T14, T34, T40, T41, T42, T54, T55 and T70), which are of reasonable quality. These include:-

- two mature Douglas fir (T8 and T13), which although having a limited life expectancy, can be seen from surrounding gardens.
- two early mature Birch (T34 and T70), which are attractive trees.
- a mature Lawson cypress (T54), which although not an attractive tree, provides screening along the frontage with Abbebury Road.
- various semi mature trees of no more than 12m in height (T4, T14, T40, T41, T42 and T55), which although providing little visual amenity value at present, have the potential to grow on.

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SJ Stephens Associates

ARBORICULTURAL, LANDSCAPE & MANAGEMENT CONSULTANTS

Although the justification of protecting these eleven trees is debatable, they are shown shaded green, along with T30 and T50, on both the plan and tree schedule attached as possible candidates for inclusion as individual trees in a Tree Preservation Order.

In my view, an Area order protecting such a large number of poor quality trees, whose retention is clearly not "in the interests of amenity", is unnecessary and will be a disincentive to good arboricultural management, which is needed if there is to be good quality tree cover in the area in the future.

Rather than an Area order, I consider it would be better practice for any Tree Preservation Order to specify only the individual trees that warrant protection.

If you require any further information, please do get in touch.

Yours sincerely,

Simon Stephens
Arboricultural Association Registered Consultant
MA Oxon, Dip Arb(RFS), MArborA, CEnv, MICF

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**Government Planning Practice Guidance (extract)
Tree Preservation Orders and trees in conservation areas**

When should the area category be used?

The area category is one way of protecting individual trees dispersed over an area. Authorities may either protect all trees within an area defined on the Order's map or only those species which it is expedient to protect in the interests of amenity.

The area category is intended for short-term protection in an emergency and may not be capable of providing appropriate long-term protection. The Order will protect only those trees standing at the time it was made, so it may over time become difficult to be certain which trees are protected. Authorities are advised to only use this category as a temporary measure until they can fully assess and reclassify the trees in the area. In addition, authorities are encouraged to resurvey existing Orders which include the area category.

Public Comments: Sarah Schwab

For the attention of Chris Leyland
Tree Officer
Oxford City Council
St Aldate's Chambers
109-113 St Aldate's
Oxford OX1 1DS

3rd October, 2014

**Objection to provisional blanket TPO order placed on 10 & 18
Abberbury Road Iffley Oxford** Your ref: 14/00006/ORDER³⁰

Dear Mr Leyland

I wish to raise an objection to the Provisional Tree Preservation Order that has been applied to all of the land surrounding 18 and 10 Abberbury Road for the following reasons:

1. It is unreasonable and is unjustified. The site is well outwith the Iffley Conservation area.
2. There is no other constraint that affects this site.
3. The garden and site area between the two properties has been left wild and the trees unmaintained for years. Many of these trees are actually too large and dominate the site with their overbearing height near the road. The huge cypress trees have become unattractive due to their size and scale as they were planted in the 1930's.
4. I have received no explanation as to whom has instructed this order and I have been told Chris Leyland is away on holiday until 11th October (after the deadline of 9th October for responses) Without this knowledge it is difficult to ascertain why this action has occurred. I understand it is only a provisional order simply to prevent unnecessary cutting of trees by any developer.
5. I am a one third owner of this site. I have submitted an application to the Oxford Planning Authority after consultation

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with Niko Grigoropoulos, for a small development of three(3) dwellinghouses, numbers 12, 14 and 16 Abberbury Road that was laid out by the Oxford City Council 90 years ago. This TPO was placed without my knowledge on the land and I was informed of this by a third party. Any trees that might need to be removed would be for safety reasons or for the purpose of building these houses.

6. This area of garden has always been planned to contain three additional properties according to the numbering of the houses in the original street design and urban landscape.

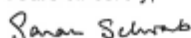
I believe a small development of three houses would be a significant benefit to the Amenity value of Abberbury Road, as no longer would this land/road frontage look derelict and overgrown, but it would actually enhance the road and be a more pleasant and safe pavement to walk up and down especially at night in the winter when it is dark and spooky. The overgrown trees could be thinned out so the significant species had a chance to grow naturally and not compete.

7. Previously, in 2008, the Tree Officer was unconcerned about any of the trees on the site that I wished to remove and told me there was no Tree Protection Order on any of the Trees, as the area of the site was well outside the Iffley Conservation Area, and there were no other constraints on the site.
8. All the trees were planted in the 1930's, and many are cypress or tuja trees, that have actually become too large. The site was historically a livestock field but also linked to a quarry, so none of these species of trees were natural to the area.
9. Some of these large trees have become damaged and will need to be removed for safety reasons
10. The trees along the road that border the pedestrian footpath are predominantly Silver Birch trees that have reached the end of their lifetime, some cypress trees that are overgrown now, and one mature copper beech tree. They are in need of thinning out, as pedestrians walking up that road, certainly

feel unsafe at night, especially for women and children who might walk home alone at night; most people walk the other side of the road, because of this. It is a bit creepy.

11. Furthermore, the garden sheds of both properties have been broken into. At least four times our properties have been burgled or vandalized, and not seen because of the overgrown garden and dense trees.
12. The three houses have been planned for 90 years and as few trees as possible will be removed for these houses to be built.

Yours sincerely,



Sarah Schwab
Clauchendolly
Borgue, Kirkcudbright DG6 4TW



Photo 1: View of TPO site and No.10 Abberbury Road: right hand side (View looking east).



Photo 2: View of TPO site (centre and copper beech): left hand side (View looking west).

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Photo 3: View of TPO site and No.18 Abberbury Road: left hand side (View looking west).