

Report sponsor: Director of Planning, Transport
and Engineering
Report author: Tree Preservation Order Officer

Confirmation of TPO No. 601

Purpose

- 1.1 The Planning Control Committee is asked to consider an objection to the making of TPO No.601

Recommendation(s)

- 2.1 To authorise the Director of Planning and Transportation to confirm the temporary Tree Preservation Order (TPO) No. 601 without modification

Reason(s)

- 3.1 In the interest of public visual amenity.

Supporting information

- 4.1 On the 22nd July 2021 we made TPO 2021, Number 601 (Land at and adjacent to the Former Showcase Cinema and Pizza Hut Site, Foresters Park Centre, Sinfin Lane, Derby). A copy of the TPO schedule can be seen as appendix 1. A copy of the TPO plan can be seen as appendix 2.
- 4.2 **Grounds for making the order** - The trees indicated in this Order were proposed for protection in the interests of public visual amenity. The trees can be appreciated from the public realm and contribute materially to the amenities area by playing an important part in providing a sense of scale and maturity and by having a general 'greening' effect on the immediate area.
- 4.3 **Background information** – The trees are located on and adjacent to the former Showcase Cinema and Pizza Hut site located on the Foresters Park Estate. A planning application reference No. 21/00844/FUL has been submitted to develop the site. The planning application documents can be viewed at <https://docs.derby.gov.uk/padocumentserver/index.html?caseref=21/00844/FUL> The application summary is recorded as Demolition of existing Cinema and separate restaurant buildings. Erection of building for motor dealership, including MOT Testing facility and external area for storage and display of vehicles | Former Showcase Cinemas Foresters Park Centre Sinfin Lane Derby DE23 8AG.

The plans submitted with the application proposed the removal of trees on and adjacent to the site. Some of the tree removals can be justified however some are not justified. This area type TPO will ensure that trees on the site are not prematurely

removed whilst the planning application is determined. It will also protect retained trees during construction should planning permission be granted.

- 4.4 The agent for the planning application reference No. 21/00844/FUL objected to the making of the TPO. A copy of the objection letter can be seen as appendix 3.

Reasons for the objection are summarised as below:

- it is unnecessary and unreasonable and will be onerous for the reasonable ongoing management of the site, in perpetuity.
- The owner of the site is a responsible operator and has demonstrated good arboricultural management since taking ownership.
- The making of a TPO to address what can be suitably and reasonably be dealt with through the appropriate channels, which are already engaged, is arbitrary, unnecessary and overly onerous, to the point of being unreasonable and cannot be described as an expedient action.
- In the future any necessary works to those trees for maintenance or safety would require consent if the TPO is made, which involves time and expense for both the owners and the Local Authority.

- 4.5 It was noted that visually significant trees were marked up for removal on site and that several trees had recently been removed. This was prior to the planning application being determined. It was also noted that demolition works had already started with associated potential damage to retained trees. The potential premature removal and potential damage to trees due to poor site operations demonstrated that there is expediency to make the trees on site subject to a TPO.

- 4.6 Further discussions have taken place with the developers regarding tree retentions and design requirements and whilst these further discussions are welcomed the confirming of the TPO is expedient to ensure trees are not prematurely removed and to enforce tree protection during construction should planning permission be granted.

- 4.7 Submitting TPO tree works applications is a straightforward process which could include a ten-year management plan for cyclic works. Whilst TPO tree works applications do take time to submit and process the LPA accepts this as necessary in order to secure public visual amenity. A management plan has been submitted with the amended Arboricultural Method Statement which if consent is granted would mean that cyclic tree works could be carried as stated in the management plan without the requirement to submit an application each time the works are required.

Public/stakeholder engagement

- 5.1 None.

Other options

- 6.1 Not to confirm the TPO or confirm the TPO with modifications.

Financial and value for money issues

7.1 None.

Legal implications

8.1 None.

Other significant implications

9.1 None.

This report has been approved by the following people:

Role	Name	Date of sign-off
Legal Finance Service Director(s) Report sponsor Other(s)	Paul Clarke	28/09/2021

Background papers:	
List of appendices:	Appendix A – Copy of the TPO Appendix B – Objection letter

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Town and Country Planning Act 1990

The [Derby City Council (Land at and adjacent to the Former Showcase Cinema and Pizza Hut Site, Foresters Park Centre, Sinfin Lane, Derby) Tree Preservation Order 2021, Number 601]

The [Derby City 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 [Derby City Council (Land at and adjacent to the Former Showcase Cinema and Pizza Hut Site, Foresters Park Centre, Sinfin Lane, Derby) Tree Preservation Order 2021, Number 601]

Interpretation

2. - (1) In this Order “the authority” means the [Derby City 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, wilfully damage, or wilfully 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

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provision for preservation and planting of trees), this Order takes effect as from the time when the tree is planted.

Dated this [22nd] day of [July 2021]

[if the Council's Standing Orders require the sealing of such documents:]

~~[The Common Seal of [Derby City Council]~~

~~was affixed to this Order in the presence of —~~

~~.....]~~

[if the Council's Standing Orders do not require the sealing of such documents:]

[Signed on behalf of the [Derby City Council]



.....

Verna Bayliss - Director of Planning, Transportation & Engineering

Authorised by the Council to sign in that behalf]

~~[CONFIRMATION OF ORDER~~

~~[This Order was confirmed by [Derby City Council] without modification on the [] day of []]~~

~~OR~~

~~[This Order was confirmed by the [Derby City Council], subject to the modifications indicated by [], on the [] day of []]~~

~~[Signed on behalf of the [Derby City Council]~~

~~Authorised by the Council to sign in that behalf]~~

~~[DECISION NOT TO CONFIRM ORDER~~

~~[A decision not to confirm this Order was taken by [Derby City Council] on the [] day of []]~~

~~[Signed on behalf of the [Derby City Council]~~

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.....
Authorised by the Council to sign in that behalf}

~~[VARIATION OF ORDER~~

~~[This Order was varied by the [Derby City Council] on the [] day of [] by a variation order under reference number [] a copy of which is attached]~~

~~[Signed on behalf of the [Derby City Council]~~

.....
Authorised by the Council to sign in that behalf}

~~[REVOCATION OF ORDER~~

~~[This Order was revoked by the [Derby City Council] on the [] day of []]~~

~~[Signed on behalf of the [Derby City Council]~~

.....
Authorised by the Council to sign in that behalf}

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Article 3

SCHEDULE**Specification of trees****Trees specified individually**

(encircled in black on the map)

<i>Reference on map</i>	<i>Description</i>	<i>Situation</i>
[None]		

Trees specified by reference to an area

(within a dotted black line on the map Appendix 1 – Map 1 and Map 2)

<i>Reference on map</i>	<i>Description</i>	<i>Situation</i>
[A1]	All trees within the dotted black line on the map - Appendix 1 - Map 1	On land at the former Showcase site, Foresters Park Centre, Sinfen Lane, Derby
[A2]	All trees within the dotted black line on the map - Appendix 1 - Map 2	On and adjacent to land at the former Showcase Cinema car park and Pizza Hut site, Foresters Park Centre, Sinfen Lane, Derby

Groups of trees

(within a broken black line on the map)

<i>Reference on map</i>	<i>Description (including number of trees of each species in the group)</i>	<i>Situation</i>
[None]		

Woodlands

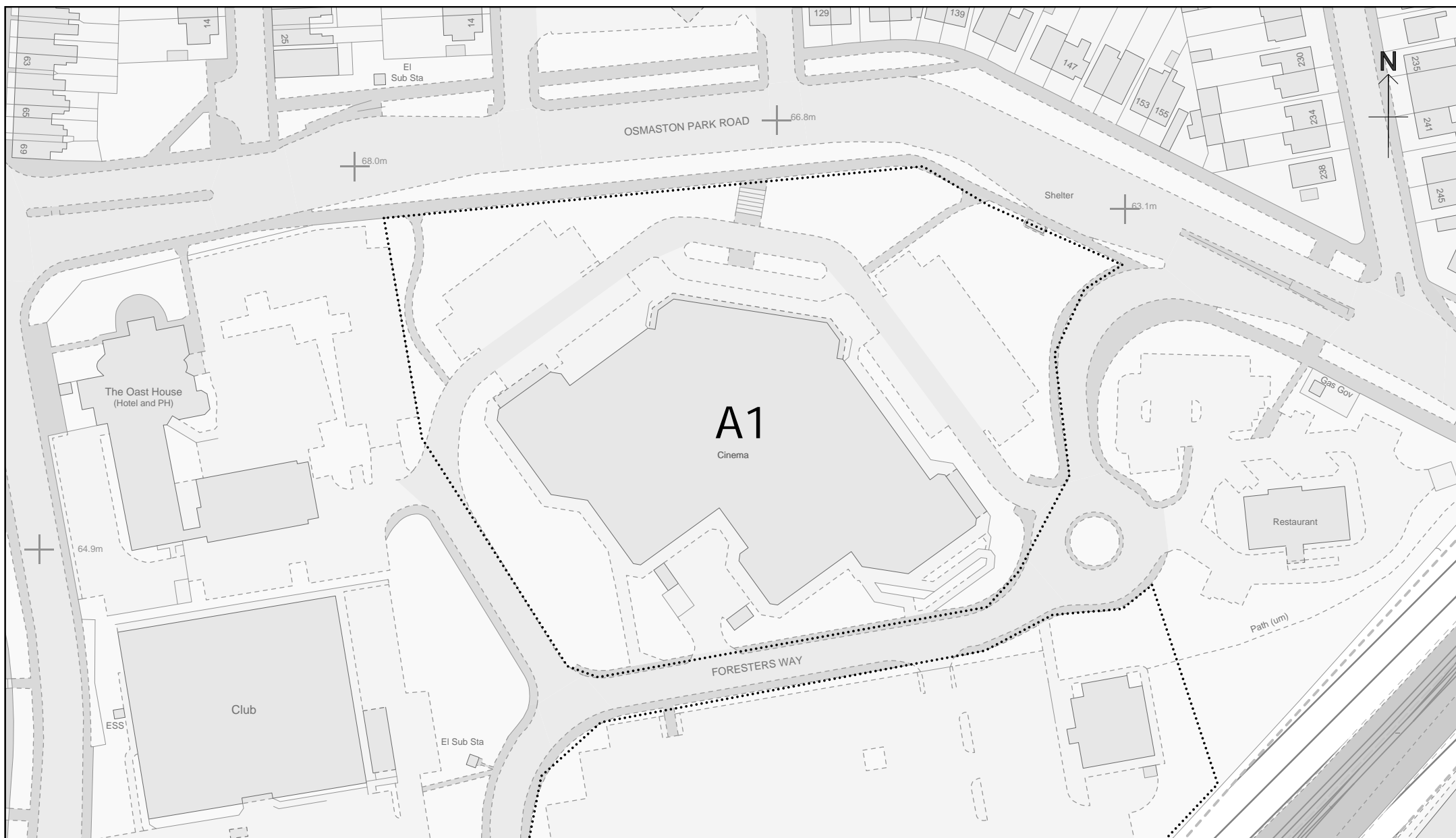
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(within a continuous black line on the map)

<i>Reference on map</i>	<i>Description</i>	<i>Situation</i>
[None]		

Classification: OFFICIAL







Mr. A. Shervill
Communities and Place Directorate
Derby City Council

By Email

24th August 2021

Dear Mr. Shervill,

TPO No.601 – Former Showcase Cinema and Pizza Hut Site, Foresters Park Centre, Sinfin Lane, Derby

Town and Country Planning (Tree Preservation) (England) Regulations 2012

We write to formally object to the making of TPO No.601 relating to the trees on and around the former Showcase Cinema and Pizza Hut sites on Foresters Way. For clarity, the objection relates to all trees within the black dotted lines annotated on Maps 1 & 2 issued with the TPO Notice.

The site owner objects to the Tree Preservation Order (TPO) on the grounds that it is unnecessary and unreasonable and will be onerous for the reasonable ongoing management of the site, in perpetuity.

The 2012 Regulations allow Local planning authorities 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”,

This is set out in the Government’s Planning Practice Guidance (Reference ID: 36-005-20140306)

The Planning Practice Guidance confirms what expedient means in practice (Reference ID: 36-010-20140306):

“Although some trees or woodlands may merit protection on amenity grounds it may not be expedient to make them the subject of an Order. For example, it is unlikely to be necessary to make an Order in respect of trees which are under good arboricultural or silvicultural management.”

In this case, it is clear and can be demonstrated that it was not expedient, necessary, or reasonable to recommend making a Tree Preservation Order for the group of trees around the former Showcase Cinema site, the Pizza Hut Restaurant and associated car parking, Foresters Way. The owner of the site is a responsible operator and has demonstrated good arboricultural management since taking ownership.

In February 2021 an inquiry was sent to the City Council requesting confirmation that there were no TPOs covering the site. This was confirmed by the TPO Officer and no action was taken to protect the trees.

In April 2021, the owner of the site instructed a Tree Survey and was alerted to a number of trees that are unsuitable for retention. In May, the owner instructed some limited maintenance work and removal of one tree that was considered dangerous. The works were undertaken by suitably qualified professionals, within the lawful parameters for such maintenance work and the appropriate steps were taken, including notification of the Local Authority. The owner of the site demonstrating that in relation to trees on the site, proper procedures would be followed.

In May 2021, a planning application was submitted for redevelopment of the site, this was accompanied by a detailed Arboricultural Assessment, which included a full tree survey identifying the condition of each tree individually and in groups and assessing the impact that the proposed development would have on them. The Applicant acknowledges the importance of green infrastructure, in terms of visual amenity, bio-diversity and as an asset to respond to the Climate Crisis and as a result, the proposed tree work is limited to what is necessary and to strike an appropriate balance between the environmental and economic strands of sustainable development.

As a part of the normal planning process, the Local Authority had (and still has) the opportunity to work with the site owner (which has previously demonstrated integrity and a willingness to follow appropriate procedure), to ensure that tree work is limited to what is absolutely necessary.

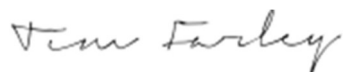
The making of a TPO to address what can be suitably and reasonably be dealt with through the appropriate channels, which are already engaged, is arbitrary, unnecessary and overly onerous, to the point of being unreasonable and cannot be described as an expedient action.

There remain approximately 175 trees on the site, the majority of which are in the lower quality categories and many that are expected to come to the end of their useful life in less than 20 years. In the future any necessary works to those trees for maintenance or safety would require consent if the TPO is made, which involves time and expense for both the owners and the Local Authority. Again, we would contend, in these circumstances, where there is a willing owner and an application (and conditions) through which the matter ought to be dealt, the making of a TPO would be unnecessary and overly onerous.

On behalf of the site owner, we would respectfully request that the Committee rejects this application for a TPO and recommends that Officers work with the site owners through the ongoing planning process to achieve the best outcome for the trees on the site.

I would welcome the opportunity to discuss this matter further and would be happy to address any queries that may arise from the submission.

Yours faithfully

A handwritten signature in dark ink, appearing to read 'Tim Farley', written in a cursive style.

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