

E04 Parndon Mill: TPO Note

1. At E04, NR proposes, through the Order, to extinguish footpath EX/185/73 as it passes over the railway, and the sections of footpath EX/185/73 immediately to the north and south of the railway. The closure of E04 is dependent upon the creation of a new footpath to the south of the railway, running north-south from the point from which footpath 73 is extinguished to Elizabeth Way.
2. The proposed footpath (and the plot of land required temporarily for its creation) is situated within a parcel of land which is being developed by Kier Living Ltd (Obj 175). That parcel of land, and the proposed footpath, is situated immediately to the east to a parcel of woodland owned by Harlow District Council known as Ram Gorse Wood.
3. Various trees within Ram Gorse Wood are protected by Tree Protection Order made by Harlow District Council on 17th August 1990 under the Town and Country Planning Act 1971.
4. Section 60(1) of the 1971 Act provided (so far as is material) that:

“If it appears to a local planning authority that it is expedient in the interests of amenity to make provision for the preservation of trees or woodlands in there area, they may for that purpose make an order (in this Act referred to as a “tree preservation order”) with respect to such trees, groups of trees or woodlands as may be specified in the order; and, in particular, provision may be made by any such order –

(a) For prohibiting (subject to any exemptions for which provision may be made by the order) the cutting down, topping, lopping or wilful destruction of trees except with the consent of the local planning authority, and for enabling that authority to give their consent subject to conditions;...”

5. Article 2 of the TPO provides as follows:

“Subject to the provisions of this Order and to the exemptions specified in the Second Schedule hereto, no person shall, except with the consent of the authority and in accordance with the conditions, if any, imposed on such consent, cut down, top, lop, uproot, wilfully damage or wilfully destroy or cause or permit the cutting down, topping, lopping, uprooting, wilful damage or wilful destruction of any tree specified in the First Schedule hereto or comprised in a group of trees or in a woodland specified therein, the position of which trees, groups of trees and woodlands is defined in the manner indicated in the said First Schedule on the map annexed hereto which map shall, for the purpose of such definition as aforesaid, prevail where any ambiguity arises between it and the specification in the said First Schedule.”

6. Schedule 2 to the TPO provides, so far as is material, as follows:

“This Order shall not apply so as to require the consent of the authority to [...]

(3) the cutting down, uprooting, topping or lopping of a tree. [...]

(c) where immediately required for the purpose of carrying out development authorised by the planning permission granted on an application made under Part III of the Act, or deemed to have been granted for any of the purposes of that part. “

7. Part III of the TCPA 1971 included s.40 – Development by local authorities and statutory undertakers with authorisation of government department - which provided for planning permission to be deemed to be granted where (inter alia) authorisation of a government department was required and had been granted.
8. S.40 of TCPA 1971 was the predecessor provision to s.90 of the Town and Country Planning Act 1990 which provides for deemed planning permission, inter alia, where an order is made under s.1 or s.3 of the Transport and Works Act 1990.
9. Provisions as to tree preservation orders are now provided for in Part VIII of the TCPA 1990. S.202C provides that tree preservation regulations made make provision for prohibiting the cutting down, topping, lopping, uprooting, wilful damage or wilful destruction of trees, and s.202C(3) provides that a prohibition may be imposed subject to exemptions.
10. The Town and Country Planning (Tree Preservation) (England) Regulations 2012 were made under Part VIII of the TCPA 1990. Regulation 13 identifies prohibited activities. Regulation 14 - Exceptions – provides that:

“Nothing in regulation 13 shall prevent –

(a) The cutting down, topping, lopping or uprooting of a tree –

...

(vii) so far as such work is necessary to implement a planning permission (other than an outline planning permission or, without prejudice to paragraph (iii)(cc), a permission granted by or under the Town and Country Planning (General Permitted Development) Order 1995) granted on an application under Part III of the Town and Country Planning Act 1990 (control over development), or deemed to have been granted (whether for the purposes of that Part or otherwise)”

11. Neither the proposed footpath, nor the plot of land required to construct it, is situated within the area protected by the TRO. NR would not need to fell, or remove, any of the trees in order to create the footpath. At most, it might be necessary to prune / lop any branches overhanging the proposed new footpath in order to ensure there is sufficient headroom for walkers to pass along the footpath.
12. Alongside the application for the TWAO, NR has submitted a request for deemed planning permission under s.90(2A) TCPA 1990 for the Scheduled Works and such other works as might require planning permission. Whilst the creation of a new PROW would not, in and of itself require planning permission, due to the need to regrade the land along the route of the proposed footpath (in order to ensure there is an appropriate gradient and cross fall for the footpath), this is likely to constitute operational development (for the purposes of s.55 TCPA 1990) and hence to be authorised by the deemed planning permission (if granted). As such, any need to lop trees within the area protected by the TRO would be exempt from prohibition on lopping (etc) as it would fall within Schedule 2 para 3(c) of the TPO .

13. Separate to the TPO constraints, NR would highlight that Article 30 of the (draft) Order would empower NR to (inter alia) lop any tree “near any part of the authorised works if it reasonable believes it necessary to do so to prevent the tree or shrub –

- (a) From obstructing or interfering with the construction, maintenance or operation of the authorised works or any apparatus used on the authorised works, or
- (b) From constituting a danger to persons using the authorised works.”

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