

PLANNING COMMITTEE

18 AUGUST 2016

CONFIRMATION OF TREE PRESERVATION ORDER 2166 – EASTCLIFFE, EAST HILL, WINCHESTER.

REPORT OF THE HEAD OF LANDSCAPE AND OPEN SPACES

Contact Officer : Stefan Kowalczyk (Tel 01962 848210  
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RECENT REFERENCES:

None.

EXECUTIVE SUMMARY:

To consider confirmation of Tree Preservation Order 2166 to which 4 letters of objection have been received.

RECOMMENDATION:

That, having taken into consideration the representations received, Tree Preservation Order 2166 be confirmed.

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### CONFIRMATION OF TREE PRESERVATION ORDER 2166 - LAND AT EASTCLIFFE, EAST HILL, WINCHESTER.

### REPORT OF THE HEAD OF LANDSCAPE AND OPEN SPACES

#### DETAIL:

- 1.1 The Local Planning Authority received a conservation area notification to fell. After assessment of the notification to fell, the Local Planning Authority (LPA) informed the applicant that an objection will be raised if sufficient justification in support of the proposal is not received within the 6 week notification period. There has been no justification in support of the proposals received by the LPA hence the need to serve a TPO to preserve the amenity value of the trees.
- 1.2 The Arboricultural Officer visited the site on 2 March 2016 and a provisional Tree Preservation Order was made on 18 March 2016, which will expire on 17 September 2016 unless it is confirmed.
- 1.3 This matter comes to Planning Committee because four letters of objection have been received.

#### SUMMARY OF OBJECTION LETTERS:

- 1.4 Right to light. Reason for objection – “trees are shading my property and restricting sunlight to several rooms and front garden. I believe this interferes with my legal right to light as per the prescription Act 1832 section 3.”
- 1.5 Amenity Value. Reasons for objection – “the trees are poor quality specimens which have not been adequately managed in the past. They have self seeded so are not there intentionally. They have significant ivy growth. They generate considerable leaf fall which makes access to the properties more hazardous, particularly for elderly residents.”
- 1.6 Property Damage. Reasons for objection – “the trees have been poorly managed and allowed to increase in size. I have significant concerns regarding the stability of the embankment slope and retaining wall on which the trees are growing. I have noticed recent movement of the retaining wall and believe if no action is taken, this will lead to the failure of the slope and/or retaining wall which will damage my property and may even hurt pedestrians or damage vehicles.”
- 1.7 Threat to Trees. Reason for objection – “there is no current or ongoing threat to the trees. I submitted an application to fell the trees which lie in a conservation zone, however I have been informed that this has been rejected and therefore I have no intent to 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 the trees without the granting of consent by the authority.”

- 1.8 Quality of Trees. Reasons for objection – “the trees have self seeded and are not specimens. They have not been managed since the owner of no.4 managed them many years ago. Ivy is growing on the trees. Additionally the leaves in the autumn are hazardous on the street and the path to Eastcliffe, which is narrow and uneven due to root damage.”

#### SUMMARY OF SUPPORT LETTERS:

- 1.9 No items of support have been submitted to the Local Planning Authority.

#### ARBORICULTURAL OFFICER'S RESPONSE:

##### Right to Light

- 1.10 A right to light is acquired in certain circumstances by a specific grant or where the right has been acquired after 20 years of uninterrupted use. The existence of a right to light is a civil matter which is not normally considered when confirming a TPO.

##### Amenity Value

- 1.11 It is the Secretary of State's view that tree preservation orders should be used to protect selected trees and woodlands if their removal would have a significant impact on the local environment and its enjoyment by the public.
- 1.12 The group of trees that are subject to the TPO being confirmed can be seen from a public place; a footpath that serves as the beginning of the South Downs Way, and a two carriageway road that leads onto the B3330, Bar End Road, Quarry Road and Petersfield Road.
- 1.13 The trees are a significant landscape feature providing urban greening and environmental benefits within the street scene, the Winchester conservation area and the South Downs Way. Although at present the trees are obviously casting shade onto the street, along with the opposing dwellings that look out into the green screen that these trees provide, with some remedial work, this shading can be alleviated. This can be achieved by lifting of the canopy, clearing the lower vegetative growth and an ongoing reduction of the external canopy, as approved previously in the notification submitted to the Local Planning Authority, December 2012 – 11/02944/TPC.
- 1.14 It is likely that the trees have self seeded, however this is not seen by the Local Planning Authority to be a defining factor in whether or a not

a tree(s) shall be condemned or retained. Furthermore, leaf fall is not reasonable justification for removal of what is perceived to be a significant asset to the landscape.

- 1.15 Amenity value can also be taken into consideration where a substantial amount of people can see the tree from their properties, as in this situation. Considered in *Wilkson Properties v RB Kensington & Chelsea*, the Deputy Judge noted:

*"It is for this reason that the guidance goes on to recommend that the tree or part of it should normally be visible from a public place. Visibility from a public place is the normal way of establishing that there is a reasonable degree of public benefit, but it is not the only way. [Counsel for the claimant] quite properly accepted that a case of public benefit could be made out to justify the making of a TPO even where the tree is not visible from a public place and that one example where this might occur is where a significant number of members of the public could see the tree from their properties." [2010] EWHC 3274 (QB); [2010] J.P.L 1083 at [84], per Vincent Fraser QC, sitting as deputy high court judge.*

- 1.16 In the opinion of the local authority it appears expedient in the interests of amenity to make provision for the preservation of these trees. The confirmation of a TPO will ensure that in the future, sufficient justification for any proposed work to the trees will be required. This ensures good work quality and that reasonable management works are undertaken following the guidance outlined in *BS3998:2010 Tree work recommendations* and supported by sufficient justification.
- 1.17 Two amenity assessments have been carried out to support the recommendation of the Local Planning Authority that a TPO is confirmed.
- 1.17.1 Amenity Evaluation for Tree Preservation Orders. This system incorporates methods of evaluation and includes the three relevant criteria as identified in the Planning Practice Guidance (1) Visibility, (2) Individual impact and (3) Wider impact. A benchmark total score of 15 is appropriate to indicate that a tree is worthy of inclusion in a TPO. The resulting score in this case was 21.
- 1.17.2 A second assessment was carried out using the Tree Evaluation Method for Preservation Orders (TEMPO). The bench mark score for this system is 15+ points. The tree assessment result after undertaking the survey was 17 points, therefore definitely meriting a TPO.

### Property Damage

- 1.18 Within four of the objections, significant concerns over the stability of the embankment slope that the trees are rooted in and the retaining wall that supports the embankment are noted. The retaining wall is roughly 1.5m high on the roadside, 15m wide and 3m deep. The estimated soil rooting depth outlined by "GreenBlue Urban <http://www.greenleaf.co.uk/>" is 0.6m. These measurements are an estimation of what soil is likely to be available for tree roots.
- 1.19 On inspection of the trees, no obvious movement of the retaining wall and no obvious movement of the root plate were evident. Therefore, a structural engineer's report was requested in order to provide evidence of any movement or damage. No professional reports have been commissioned and presented to the Council to support the objector or owner's concerns in regards to damage to property, and therefore it is not seen to be reasonable or justified management of the area.
- 1.20 Sufficient evidence of property damage should be presented to the Local Planning Authority in order for them to be able to make an educated decision as to what precautions should be taken.
- 1.21 A calculation can be made to soil volumes required to sustain the trees. In this case, it is not a professional representation and should not be taken as fact, but could be taken as an example or guidance.
- 1.22 A projected mature diameter of these trees has been estimated at 10m for the whole group. The circle area can be calculated by:

$$(\pi * d^2)/4 = \text{circle area} = 78.5 \text{ m}^2$$

A required soil depth for rooting of 0.6m is required, so:

$$78.5\text{m}^2 * 0.6\text{m} = 47.1\text{m}^3 \text{ required soil pit volume.}$$

The current estimated volume of the rooting area of these trees is 15m width \* 3m depth \* 5m height = 225 m<sup>3</sup> \* 0.6m = 135m<sup>3</sup>.

Used as guidance this calculation implies that the trees require a soil volume of 47.1m<sup>3</sup>. The estimated current available soil volume of the rooting pit is 135 m<sup>3</sup>

### Threat to trees

- 1.23 At the time of notification, a threat to the trees was imminent. The Secretary of State advises in the Planning Practice Guidance 2014, that it may be expedient to make an order if the authority believes there is a risk of trees being felled, pruned or damaged in ways which would have a significant impact on the amenity of the area.

### Quality of Trees

- 1.24 The trees are young, medium in size and are in good health. Although being multi-stemmed, most likely self set Sycamore, they continue to be seen as a significant landscape feature that should be retained.
- 1.25 It is evident that with some reasonable works carried out, the trees' ongoing value to the area and the South Downs Way can be preserved.

### Conclusions

- 1.26 The grounds for making the TPO are in accordance with established guidelines and regulations and therefore it is recommended for confirmation.

### OTHER CONSIDERATIONS:

#### 2. COMMUNITY STRATEGY AND PORTFOLIO PLANS (RELEVANCE TO):

The confirmation of this Tree Preservation Order will contribute to the High Quality Environment outcome of the Community Strategy by maintaining the environmental quality and character of the area.

#### 3. RESOURCE IMPLICATIONS:

There are no financial implications for the City Council.

#### 4. RISK MANAGEMENT ISSUES:

There are no risk management issues for the City Council.

### BACKGROUND DOCUMENTS:

Tree Preservation Order 2166 – Land at Eastcliffe, East Hill, Winchester, Hampshire (2016)

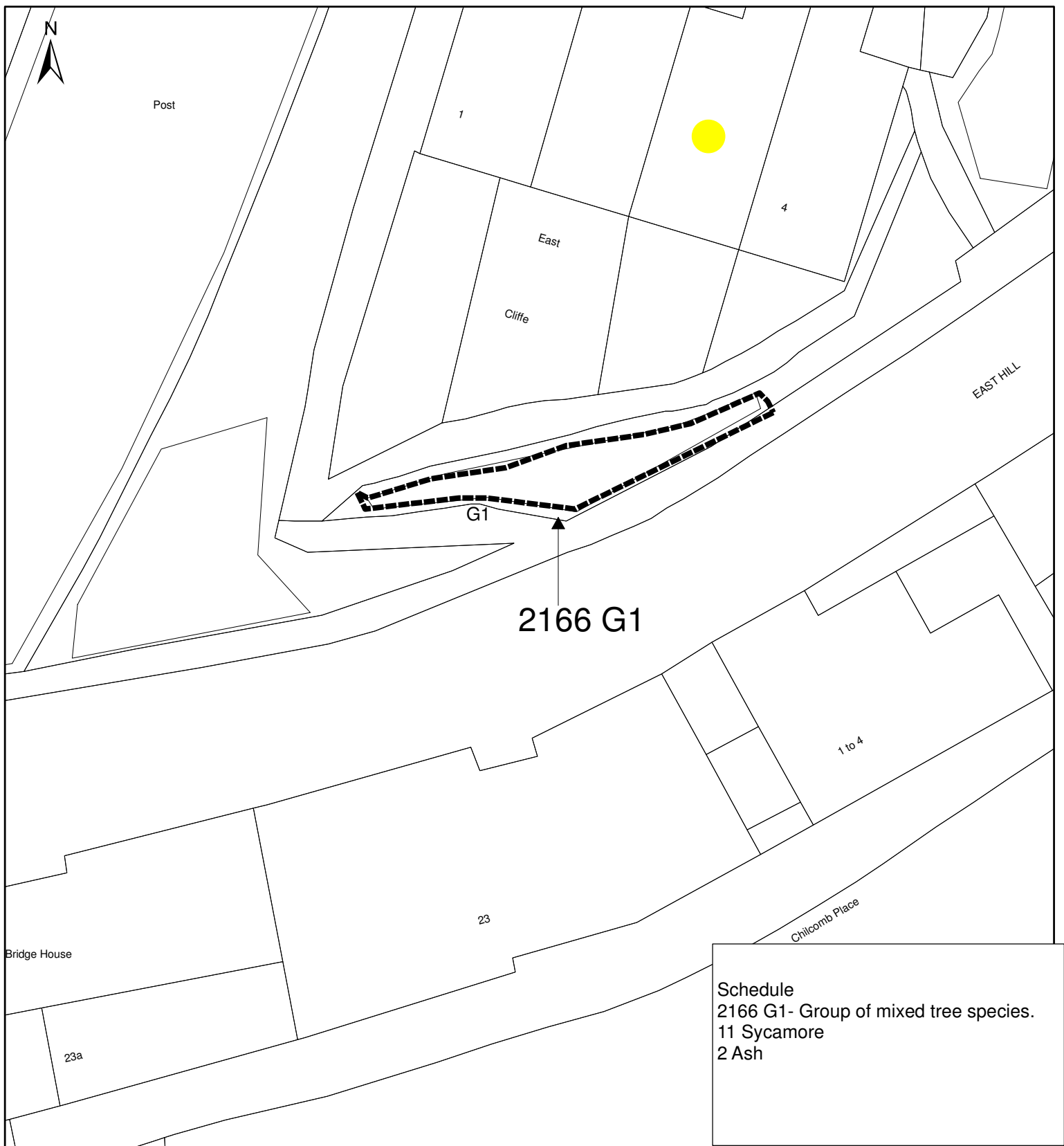
Planning Practice Guidance - Tree Preservation Orders and trees in conservation areas

<http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/>

Charles Mynors – The Law of Trees, Forests and Hedges, Second Edition (2002)

### APPENDICES:

Appendix 1                      Map.



Schedule  
2166 G1- Group of mixed tree species.  
11 Sycamore  
2 Ash

A1 Area

G1 Group

W1 Woodland

T1 Tree

**TOWN AND COUNTRY PLANNING ACT 1990**  
Section 198 - 201

**Tree Preservation Order No. 2166**

Land at  
**No 3 East Cliffe**  
**East Hill**  
**Winchester**

Location:

Scale: 1:200

Date: 18th March 2016



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