

DECISION-MAKER:	PLANNING RIGHTS OF WAY PANEL		
SUBJECT:	The application to fell trees subject to a tree preservation order at Marlhill Copse		
DATE OF DECISION:	23 rd June 2020		
REPORT OF:	Executive Director of Place		
<u>CONTACT DETAILS</u>			
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STATEMENT OF CONFIDENTIALITY		
NONE		
BRIEF SUMMARY		
To consider application 20/00067/TPO		
RECOMMENDATIONS:		
	(i)	Grant consent to fell the four remaining trees (one Ash and three Monterey Pine) that are the subject of the application, subject to replanting conditions at a ratio of 1:1 with native trees to be agreed with the Council's tree team.
REASONS FOR REPORT RECOMMENDATIONS		
1.	The application accords with good forestry practice and the works do not fail to secure the maintenance of the special character of the woodland or the woodland character of the area.	
ALTERNATIVE OPTIONS CONSIDERED AND REJECTED		
2.	As set out in the body of the report.	
DETAIL (Including consultation carried out)		
Introduction		
3.	This is an application for consent to fell four trees at Marlhill Copse under Regulation 16 of the Town and Country Planning (Tree Preservation) (England) Regulations 2012 ("the TPO Regs") submitted by Southampton International Airport Limited ("SIAL") on 13 March 2020.	
4.	The original application for consent sought consent to fell five trees. However, for the reasons set out below, since that application was	

submitted one tree has already been felled and therefore only four trees remain to be considered as part of this application.

5. The trees in question were numbered in the application as follows:
 - a. T119 (Monterey Pine)
 - b. T120 (Monterey Pine)
 - c. T124 (Monterey Pine)
 - d. T162 Ash (Common)
 - e. T163 (Beech) Common.

6. T163 is the Beech tree that has already been felled.

The Southampton (Townhill Park – Cuthill Lane) Tree Preservation Order 1956

7. The Southampton (Townhill Park – Cuthill Lane) Tree Preservation Order (“the TPO”) was made in 1956. A copy is at Annex A.
8. It protects various trees at Marlhill Copse, including a woodland numbered W.1 marked on the map. This is described as “mixed coniferous and deciduous trees including Pine, Oak, Plane and Alder. The situation of that wooded area is stated as “comprising parts of OS Parcels Nos. 845 and 823.
9. The trees that are the subject of this application fall within Area W.1.

The TPO Regulations.

10. Under Regulation 13 of the TPO Regs no person shall no person shall—
 - (a) cut down;
 - (b) top;
 - (c) lop;
 - (d) uproot;
 - (e) wilfully damage; or
 - (f) wilfully destroy,any tree to which an order relates, or shall cause or permit the carrying out of any of the activities in sub-paragraphs (a) to (f) to such a tree, except with the written consent of the authority and, where such consent is given subject to conditions, in accordance with those conditions.
11. There are various exceptions to the prohibition in Regulation 13 set out at Regulation 14 including where the tree is dead or “to the extent that such works are urgently necessary to remove a immediate risk of serious harm”.
12. Regulation 17 provides for the determination of applications for consent under Regulation 16. It states as follows:
 - (1) *Where an application is made to the authority for consent under an order in accordance with regulation 16 the authority may—*
 - (a) *grant consent under the order, either unconditionally or subject to any such condition as is specified in paragraph (2); or*
 - (b) *refuse consent under the order.*
 - (2) *The conditions referred to in paragraph (1) are—*
 - (a) *conditions within subsection (4) of section 202D1 (tree preservation regulations: consent for prohibited activities);*

(b) conditions requiring approvals to be obtained from the person giving the consent;

(c) conditions specifying the standard to which the works for which consent has been given

must be carried out; and

(d) conditions specifying that the works may be carried out on multiple occasions or within

a specified time period only or both.

13. Regulation 17(3) states that “*Where an application relates to an area of woodland, the authority shall grant consent so far as accords with the practice of good forestry, unless they are satisfied that the granting of consent would fail to secure the maintenance of the special character of the woodland or the woodland character of the area*”.
14. The legal tests that apply to the determination of this application are dealt with in more detail below.

Background to the application for consent

15. In November 2019, officers received a letter from Southampton International Airport (SIAL) in which the council were notified that tree works would be undertaken at Marlhill Copse under the exceptions given in Regulation 14(1) (a(i)) (b) & (c). The notice proposed to carry out works to a large number of trees including the felling of T119, T120, T124 and T162. Council officers carried out a site visit and inspected the trees and disagreed with SIAL’s assessment and issued a formal response in December, which resulted in the cessation of the proposed works not accepted as meeting an exception by the council.
16. On 18 February 2020, officers received a letter from Southampton International Airport Limited (SIAL) in which the council were notified that tree works would be undertaken at Marlhill Copse under the Regulation 14(1)(c) exception of the TPO Regs following assessments carried out on 10 and 17 February after Storms Brendan, Ciara and Dennis in the preceding 6 weeks.
17. A Report prepared by “Tree Surveys”, arborists commissioned by SIAL dated 17 February 2020 was submitted to the Council. This identified several trees which had been surveyed by the applicant’s arborists and either required felling or removal of certain limbs hanging over private property. At that stage, the report had not identified the 5 trees the subject of the current application for felling.
18. After further discussions between officers and SIAL, and a site visit carried out by Council officers, the proposed works were cancelled. This was because Officers did not accept that the cited exception was applicable. SIAL were advised to submit an application for safety works identified within their report and all other works to form part of the proposed woodland management plan.
19. The application to fell the 5 trees was submitted on 13 March 2020 and registered under Ref No. 20/00062/TPO. It was accompanied by a summary schedule identifying the 5 trees that were the subject of the application.
20. On the 24 March 2020 Tree Surveys submitted a letter to SIAL, following a request by them to provide a summary rationale for the proposed actions (following the site visit on 12 March 2020) to mitigate the risks posed by the three Monterey Pines (T119, T120 and T124), and the Ash (T162) and Beech (T163).

21. However, it was subsequently realised by officers that the application was registered by mistake as it required submission to the Forestry Commission (FC) as the work required a felling licence, which can only be issued by the FC
22. The application was therefore removed from the council's website and immediately referred to the FC for consideration for a felling licence. The FC, under the Forestry Act 1967, referred the application back to the city council to deal with under the TPO legislation.
23. The application was therefore re-registered as 20/00067/TPO, which is the application that is the subject of this report.
24. For various reasons, not least the emergency changes to the Council's constitution during the COVID-19 pandemic and uncertainty at the time over the possibility of holding a virtual PROW Panel committee hearing, the application was determined by officers under delegated powers rather than by the PROW Panel on 5 May 2020. The officer determining that application recommended granting the consent, and in particular noted that "*if the application were to be refused, there is a risk of branch or whole tree failure. Given the proximity to local residents this could be catastrophic and could result in loss of life or significant damage to property*".
25. However, following a legal challenge brought by one of the objectors to the grant of consent on two grounds (a breach of legitimate expectation that an application for consent would be considered by members and not determined under delegated authority, and an error of law/irrationality in determining the application), that delegated decision has been quashed by the Court by consent of all the parties. The reason that decision was agreed to be quashed was stated in the order that the Council had "failed to consider the test set out in regulation 17(3) of the Town and Country Planning (Tree Preservation) (England) Regulations 2012 and therefore erred in law when determining the application subject of the claim".
26. The applicant has notified the Council that some Works commenced under that consent, with the Beech T163 being felled over consecutive days beginning on 11 May 2020 and completed on 14 May 2020.
27. Following the Court granting an order quashing the original consent on 10 June 2020, the application was re-advertised on the Council's website. On 12 June 2020 the further material submitted by the applicant was also posted on the Council's website.
28. On 11 June certain works were carried out to T119 in order to remove an immediate risk of serious harm. The applicants stated that:

"As a result of the delay in works associated with 20/00067/TPO, we completed aerial safety inspections of the 3 Monterey Pines this week (T119 / T120 / T124) this week. The inspections raised immediate concerns with regard to the condition of T119. Per the note below from the tree surgeon who climbed the tree, it is clear that the tree poses an immediate danger and it is possible that limbs could fall from the tree at any time, posing a risk of serious harm to users of the footpath and residents of the adjacent property. This is also evidenced in the photos and video files which are available via the link below.

As an immediate action we have closed the path which runs adjacent to the trees. We have also instructed HRG to urgently start necessary works to the tree to remove the immediate risk of serious harm. We have stressed to HRG that the works should be kept to an absolute minimum and only to remove limbs,

branches and deadwood that pose an immediate risk of serious harm. HRG will start on site tomorrow morning (Thursday 11th).”.

29. Council officers reviewed the information regarding tree T119 and accepted that there was a requirement to carry out urgent works to remove immediate risks. Officers advised the airport of its position and that, as per regulation 14(1)(c), the works carried out must only be to the extent that such works are urgently necessary to remove an immediate risk of serious harm.

The evidence in support of the application

30. In addition to the original Tree Surveys Report dated February 2020 referred to above (described by the applicant as a “Visual Tree Assessment and Detection” report), SIAL has further material in the form of a letter dated 24 March 2020 prepared by Simon Holmes of Trees Surveys, a qualified arboricultural consultant. The consultant holds a master’s degree in Arboriculture and Urban forestry. He is a chartered arboriculturalist and a chartered environmentalist. He is also a professional member of The Institute of Chartered Foresters.
- 24 March 2020 TS Letter
31. The purpose of the letter states that it is a written summary of what it describes as the high risk trees extracted from the original tree survey carried out. It states as follows in relation to the Monterey Pines:
- “T119, T120 and T124 are Monterey pines located close to the southern boundary of Marlhill Copse, in close proximity to the houses located in Beverley Heights and Wilmington Close. The trees are up to 33 metres in height and although a significant feature within the landscape these trees are considered to be at the end of their safe, useful life expectancy. Monterey pines were introduced to the UK in 1833 and are a very fast growing species with young trees growing over 2 metres a year, they have an average lifespan of between 80 to 90 years. The Monterey pines at Marlhill Copse may have been planted around 1860 and, therefore, could be as much as 160 years old. As these trees age the risk of decay and decline increases, they should be considered to be at high risk of failure. During the recent high winds, a limb failure occurred to one of the trees, this event further supports our opinion that the trees are at the end of their useful life expectancy and the potential for further failures increases with age and time.”*
32. It states as follows in relation to the Ash Tree: “T162: an ash tree of poor quality and form with a large cavity to the eastern side and is considered unsuitable for retention.”
33. It concluded as follows:
- “Due to the location, size, target area and frequency of use, the trees backing onto the residential homes of Moat Hill, St Helena Gardens, Maryland Close, Beverley Heights and Wilmington Close and overhanging the access road into Marlhill Copse are considered to be of high risk and therefore must be managed accordingly to reduce the risk to acceptable levels. In recommending these works all tree works must be carried out in accordance with British Standard BS 3998:2010. Tree Work - Recommendations, and should be undertaken by a properly qualified and experienced tree contracting*

company. It is advised that they should carry public and products liability insurance of £5 million cover”.

Tree Survey's May 2020 Letter

34. On 28 May 2020 Tree Surveys submitted a further supporting letter. This letter is described as setting out “the timeline from the start of Tree Surveys' involvement from January 2020 to the date of this letter and the background information that was available at the relevant times as set out below. This letter also sets out our assessment under Regulation 17(3) of the Town and Country Planning (Tree Preservation) (England) Regulations 2012.”.
35. The letter explained that the original assessment carried out in February 2020 involved “An assessment was carried out of the trees' physiological and structural condition, and any associated cultural action or risk reduction actions, based on:- species profile, size, age range, growing conditions, exposure, proximity to and types of properties and public access and impacts on biodiversity and landscape.”
36. It goes on to state that the “The above letter of 24 March 2020 and the Visual Tree Assessment and Decay Detection results from the Marlhill Copse report are written as expert reports for consideration by Council officers as part of a TPO application (i.e. being assessed by professional arboriculturists who are experienced and aware of the techniques used in the visual tree assessment process, and who had also visited the site and viewed the condition of the trees for themselves).”.
37. The content of that letter and submissions it contains in support of the application are considered further below.

Objections to the grant of consent

38. A large number of objections have been raised to the grant of this consent from members of the public. Those that have been received have been annexed to this report. In summary, the issues raised include the following:
 - Application being linked to the proposed airport expansion
 - Application being against the Green City Charter
 - Carrying out felling in a climate emergency
 - The impacts on wildlife
 - The applicant had failed to give adequate reason for felling.
 - Impact on the history and heritage of Marlhill Copse
 - Application being submitted during Covid-19 crisis
 - The independence of the report being written for the airport.
39. An objector has also queried what is perceived as inconsistencies between the various material submitted by Tree Surveys. In particular, the urgency for these works has been questioned given that in the February survey Tree Surveys only recommended the following timeframes: T119 12 months to fell, T120 3 months (for deadwood and broken branch removal only), and T124 12 months and then not to fell completely anyway.
40. It has also been raised why trees T119 and T120, which show no signs of decay, (as set out in February Tree Survey report) were to be felled, yet T124 (which did) was not even recommended for complete felling and where is the other evidence (e.g. were climbing, pulling and/or tomography tests carried out which we have not seen – and is not referred to in the Tree Surveys report) supporting these recommendations.

ANALYSIS OF THE MERITS APPLICATION UNDER REGULATION 17

(1) Does the application relate to an area of woodland?

41. Regulation 17(3) imposes a duty on the Council to grant consent “so far as accords with the practice of good forestry” where an application “relates to an area of woodland”, unless it is satisfied that the granting of consent would fail to secure the maintenance of the special character of the woodland or the woodland character of the area
42. It is your officer’s view that the application does relate to an area of woodland and therefore Regulation 17(3) has to be considered, because the trees in question fall within the area of described as W.1 on the attached plan to the TPO.
43. It should be noted that SIAL accepted, when agreeing that the previous decision should be quashed by the Court, that the Council had failed to consider the test in Regulation 17(3). The Council also agreed to the quashing of the previous decision on that basis.

(2) Does the application accord with the practice of good forestry?

44. The applicant has stated the following with regard to whether the proposal accords with “good forestry”:
“In our view, the felling of these trees would accord with the principles of good forestry. When considering good forestry, felling at regular intervals or because of defect is normal silvicultural practice for tree managers. The removal of dead, dying and dangerous trees would also fall under normal forestry objectives for sustainable woodland management, as would the removal of competing trees, and trees that are of poor physiological condition, or of poor physical form. Building resilience into woodland management is a vital component in the fight against the global threat from pest and disease. The use of native planting such as Scots Pine, Beech and Field Maple can contribute significantly to the reduction and impacts from pests and disease and enhance the ability of trees to respond and adapt to changes.

The effect of felling, as being applied for in application 20/00067/TPO, will be similar to that of thinning and will enhance the understorey and ground flora, provide an increase in uneven age structure and improve biodiversity. This all accords with the practice of good forestry. “

45. The applicant also considers that alternatives to the felling would not be acceptable. The applicant’s consultant states that:
“The management objectives for Marlhill Copse, for example creating a sustainable woodland with enhanced habitat diversity, promoting natural regeneration on the site, maintaining the landscape and amenity contribution of the trees at Marlhill Copse, will require careful direction and a long term vision if the objectives are to be achieved.

In achieving the objectives, retaining standing trees that are over mature such as those identified above, would not be in the long term interest of good forestry management, and would be contrary to the basic principles of risk management enshrined in health and safety principles. In addition, the loss of the Monterey Pine, Beech and Ash are necessary to maintain the health and safety of the public and the adjacent landowners/occupiers”.

The definition of good forestry

46. There is no definition in the TPO Regs of what “the practice of good forestry” means.
47. However, the UK Forestry Standard (“UKFS”) is a guidance document prepared by the Forestry Commission which sets out the Government’s approach to sustainable forestry. It is referred to the national planning guidance on TPOs (“the PPG”) and it is therefore relevant when assessing what is good forestry practice. The term ‘Forestry’ is described in the UKFS as ‘The science and art of planting, managing and caring for forests’.
48. The UKFS states that it contains the UKFS Requirements are divided into legal requirements and good forestry practice requirements. The Requirements are categorised into different elements of sustainable forest management, each supported by Guidelines for managers. It makes it clear that they should be interpreted and applied flexibly: “Some aspects of forest management lend themselves to ‘yes or no’ compliance, but most do not, and so the UKFS has not attempted to condense all the complexities of forest management into an over-simplistic format. The UKFS has therefore been written to be interpreted with a degree of flexibility and applied with an appropriate level of professional expertise.”
49. Chapter 5 of the UKFS “sets out the UKFS Requirements and Guidelines for General Forestry Practice.”. It refers to the need for general compliance with legislation and states that “All occupiers of land and parties engaged in commercial activities are subject to a range of laws and regulations. Some are of special relevance to land-based activities in general and others are more specific to forestry. Compliance with the law is fundamental to the UKFS, and the main legislation of most general relevance to forestry is outlined in this section.”. It states that:
“Forestry activities and businesses must comply with all relevant laws and regulations. Operations must be authorised by the legal owner.
Reasonable measures should be taken to ensure no illegal or unauthorised activity takes place within the forest or woodland.
Forestry activities and businesses should comply with relevant codes of practice and industry guidelines.”
50. Chapter 5 of the UKFS supports the use of forest management plans combined with operational and management plans. It states for instance that :
Forest management plans should state the objectives of management, and set out how the appropriate balance between social, environmental and economic objectives will be achieved.
Forest management plans should address the forest context and the forest potential, and demonstrate how the relevant interests and issues have been considered and addressed.
51. It also states that:
“At the time of felling and restocking, the design of existing forests should be reassessed and any necessary changes made so that they meet UKFS Requirements”.
52. In this instance, there is no forest management plan in place although discussions are on-going with SIAL regarding the production of such a plan.

53. Requirement 16 is considered particularly relevant because it refers to how forests should be both planned and managed. It states that : “Forests should be planned and managed to enhance their resilience and mitigate the risks posed to their sustainability by the effects of climate change or attack by pests or diseases”.
54. Chapter 6 of the UKFS sets out various elements of sustainable forestry management. Section 6.1 sets out various requirements in relation to biodiversity and species selection. Section 6.2 considers climate change, and section 6.3 the historic environment. Section 6.4 refers to landscape and states in particular that “Forests should be designed and managed to take account of the landscape context”.
55. Section 6.5 refers to people and includes guidance on access, including visitor safety. Page 134 refers to employers health and safety legal requirements. Visitor health and safety is set out at page 135. The UKFS states the following

The Occupiers' Liability Acts 1957 and 1984 in Great Britain and the 1957 Act and 1987

Order in Northern Ireland direct landowners and managers to ensure that visitors to forests

and woodlands are not put at risk. This includes visitors exercising rights of access or using

permissive ways and dedicated land, and also covers responsibilities to people who are not

invited or permitted to be on the land in question. In this case, a duty of care still exists if:

- *the landowner or manager is aware of a danger or risk, and it is known that people may be in, or come into, the vicinity of the danger;*
- *the risk is one against which the landowner or manager may reasonably be expected to offer some protection.*

The landowner or manager must discharge their statutory duty of care in relation to people

visiting land, whether or not they are there with permission.

In England and Wales, reasonable care must be taken to ensure the safety of visitors using permissive ways and land dedicated under the Countryside and Rights of Way Act 2000.

Forest environments can present a range of natural and man-made hazards that could put

visitors at risk. Natural hazards include old trees and unstable rock faces. Man-made

hazards include quarries, mineshafts and abandoned structures, as well as potentially

hazardous activities such as forest operations, pest control measures and some sports.

The Forestry Commission has produced detailed guidance, endorsed by FISA, on managing

public safety in relation to forest operations, such as that required for harvesting sites. This

includes the definition of roles and responsibilities and the selection and management of

control measures – for example, diverting routes and providing information and signs.

Hazards that pose significant and foreseeable risks to visitors should be managed to ensure the risks are minimised, whether or not the area is open to the public.

All those involved in forestry should be familiar with and follow industry standard health and safety guidance on managing public safety

56. Whilst the UKFS does not specifically and expressly address the situation here where woodlands may also pose a risk to neighbouring property in addition to visitors to the woodlands themselves, as it focuses primarily on employee and visitor safety. But it is clear, particularly in light of the flexible approach that the UKFS endorses with regards to application, that managing public safety is clearly a very important component of the UKFS.
57. It is your officer's view therefore that good forestry practice would entail the removal of trees that pose a significant risk to visitors or neighbouring properties, where there are no reasonable alternatives available to manage and mitigate that risk, so long as conditions are imposed which provide for the replanting of suitable species of trees.

The condition of the trees and the risk they pose

58. The applicant's consultant has assessed the trees and has stated that it is his professional opinion that the trees are at the end of their useful life and that, due to the size, species and location of the trees, they present a high risk.
59. The recommendation to fell as advanced by the applicants in relation to each tree is set out in the accompanying summary schedule to the application. This sets out the position and location of each tree relative to the neighbouring properties and a summary of their condition. It should be noted that in respect of Trees 119, 120 and 124 they overhang gardens of residential properties. The Ash, 162, has been cut back to near to and no longer extends past the boundary, however the tree has a bias towards the garden and given the loss in structural integrity associated with the stem cavity is at risk of failure.
60. Tree Surveys summarises the condition of the trees in the following way:
"The three Monterey Pine trees (T119, T120 and T124) are well beyond the normal natural age range for the species, the average lifespan is 80 to 90 years and in our opinion the trees were most probably planted around 1860 therefore, they are approximately 160 years old, and at least 60 years beyond their average lifespan. As trees age the risk of decay and decline increases and with increased age comes an increased risk of failure as demonstrated by the recent limb failure of T119, as such they must be considered to be high risk due to their age, condition and proximity to the adjacent properties and public.

The Beech tree (T163) has fungal fruiting bodies of Ganoderma species, in the advanced stage of the decay process complete stem failure or uprooting may occur, and the advanced inspection technique (Micro drilling decay detection) isolated extensive decay around the base, this extended up the stem to at least 1.5 metres above ground level. The tree must be considered as high risk and failure will occur if it is not felled.

The Ash tree (T162), has a very large stem cavity close to ground level, the wood is decayed, and fungal fruiting bodies were evident within the cavity. The tree is within falling distance of the adjacent properties and access road and is at high risk of failure and must be felled."

61. Your officer agrees with that assessment of the condition of the trees and the risk they pose as summarised in the evidence submitted by Tree Surveys. It is noted that an objector has raised the lack of any actual decay in T119. This is noted. However, the applicant's risk analysis in respect of this particular tree is based on the risk of decay and the increase in failure based on lifespan not actual evidence of decay.
62. Officers have noted a discrepancy between the application form and the accompanying schedule in respect of T124: the form applies for felling whereas the schedule recommends the felling to 10 metres. Officers have clarified with SIAL that the application is for the complete felling and have requested a revised schedule from SIAL for completeness. Officers have proceeded to consider the complete felling of T124. For the avoidance of doubt, officers do not consider that retaining a 10 metre stem accords with good forestry practice as the stem will naturally decay and present a future hazard to properties; it will not generate new growth from the pruning points at 10m, and therefore will only ever remain as a dead standing stem. The stem will look aesthetically poor as a boundary feature, therefore felling complete to ground would be a preferred action for this tree being in close proximity to properties. The only benefit of retaining a 10 metre stem is for wildlife habitat creation but this has to be weighed up against continuing risk to neighbouring properties. The same considerations would apply equally to T119 and T120.
63. In respect of T120, it is correct that the recommendation originally was not to fell. But this position was reviewed by Tree Surveys following the storms in February following a site visit as described in the schedule:

*"Remove all deadwood over 25 millimetre in diameter and remove any broken or snapped branches *Update (site meeting 5th March) - Fell to Ground Level - Following adjacent storm damage and increased risk of property & personnel damage during deadwood removal"*
64. The issues in relation to old Monterey Pines identified by the applicant are recognised by the Council's tree officers. It is accepted that a characteristic of old Monterey Pines is that they can suffer from sudden limb failure and/or uprooting. This has been seen locally whereby a council owned Monterey Pine, of similar age, uprooted and fell across a main road. Post failure inspection could not account for decay and was considered to be a 'natural' occurrence. In the past month, a council owned Monterey Pine, of similar age, shed two large structural limbs. A post failure inspection identified that two hazard beams had formed and this was attributed to excessive end weight on the limb and possibly assisted by a heavy downpour of rain, however was unlikely to be discernible from a ground level inspection.
65. Given the age, size and location of the trees in relation to properties, it is your officer's view there is a significant and unacceptably high risk to the neighbouring residential properties and people accessing those properties and to visitors and users of the woodland and that risk will inevitably increase as the trees continue to age. In summary, whilst your officers accept that there is no immediate risk of serious harm, nonetheless the trees in question do pose an

unacceptably high safety risk to neighbouring properties and users of the woodland.

Alternatives to felling.

66. The applicant has set out what it considers could be alternative to felling, including the following:

“Alternatives to felling should also be considered where they are appropriate, and tree management must be balanced with the risks associated with them for example:

*Fencing off areas around the trees to protect the occupants or public;
Diverting paths around target trees;
Canopy reduction or canopy thinning and in some cases a combination of the two.*

In the case of the trees at Marlhill, fencing them off (exclusion) would be impractical, as it would block the access road along the top of the escarpment and would not diminish the risk to the adjacent properties should they fail. Diverting the access road may be possible, but construction work would result in damage to trees along the new route and would not reduce the risk associated with the trees should they fail in relation to adjacent properties.

Canopy reduction is unsuitable for most coniferous tree species as their growth is directed outward from the needle bearing tips. Removal of the tips during a canopy reduction will result in the loss of the leading shoots and they are unlikely to redevelop. The reduction will leave a weak unstable tree with a bare, unnatural appearance. The reduction will also result in a significant number of pruning wounds, providing entry points for bacterial and fungal pathogens.”

67. Officers agree with that analysis. In the opinion of officers who have visited the site, it is considered that there is no reasonable alternative that would sufficiently mitigate the risk posed by the trees in question.

Overall conclusion regarding good forestry practice

68. It is your officer's view that the proposal does accord with good forestry practice, having regard to what is set out in the UKFS.

(3) Does the granting of consent fail to secure the maintenance of the special character of the woodland or the woodland character of the area?

69. If members agree with the view above in relation to good forestry practice, then there is a duty to grant consent unless members are satisfied that the granting of consent would fail to secure the maintenance of the special character of the woodland or the woodland character of the area. That issue is considered in this section.
70. If members: (a) do not agree with the view above in relation to good forestry practice and/or (b) consider that the works would fail to secure the maintenance of the special character of the woodland or the woodland character of the area, then they still have to consider whether to grant consent nonetheless. That issue is considered in section 4 below.

What is the special character of the woodland or woodland character of the area?

71. The applicants have stated that:

“Due to the steep topography of the woodland, and the limited views of the woodland from the surrounding area, there are few locations which provide any direct views of the five trees identified for felling. The only direct views of the five trees, from outside the woodland, are from highways Moat Hill and St Helens Gardens and even then the views are restricted to the upper parts of the trees due to the buildings and other vegetation.

While the removal of the trees would have some impact on the skyline views from the above highways, it will be negligible due to the remaining trees in the woodland providing a ‘background woodland character’ to the landscape. Therefore, in our opinion there would be a negligible impact on the woodland character of the area.”

72. Officers have made an assessment of the special character of the woodland which is described in the following paragraphs.

73. Marlhill is visible from many of the surrounding areas due to the topography of the land, with some roads having a greater view than others. Marlhill can also be seen in parts from the M27. The pine trees are dispersed amongst other broadleaved trees that form the boundary.

74. From the entrance from River Walk there is a narrow section of woodland to the north of the tarmac path with wetland set down the bank from semi-mature mixed broadleaved trees with understory consisting of Elm, Hawthorn, Plane, Ash and Sycamore. To the south of the path there are some prominent mature Oak trees that are within the rear gardens of private properties.

75. Further along, the woodland widens to the north of the path and continues with a mixture of broadleaved trees, such as Beech, Oak, Sycamore Ash. The understory is mainly Ash, Sycamore and Holly with some elm present. Pines start to appear on a steep bank to the south of the path. These are Corsican pines with understory mainly of Sycamore and Holly.

76. Continuing forward, the woodland continues to widen to the north and is set down a bank from the path where it eventually meets the wetlands. On the south of the path, the woodland belt widens and the mixed broadleaf trees are set up on a bank rising up from the path. Monterey pines are starting to be present within the woodland. Remains of large pine failure still present within the mixed broadleaved trees of varying age class.

77. The tree line on the south of the path continues and then narrows to the point where tree T119 stands. Due to the width of the bank, the majority of the canopy above is dominated by the Monterey Pine (T119). Mixed broadleaved trees of varying age class either side. There is no real understory in this section.

78. The woodland continues to expand to the east and is a mixture of broadleaved trees with understory of Ash, Sycamore, Lime, Holly, Yew, Elm and Hazel.

79. A majority of the woodland to the north of the path is designated as ancient semi-natural woodland and has a mix of age class and species to enhance biodiversity.

80. Based on this analysis, officers have concluded that the special character of the woodland is a mixed and varied semi-natural woodland. The existence of the three Monterey Pines forms part of that variety and mixture but by themselves are not the defining aspect of the special character of the woodland.

Would the works fail to secure the maintenance of that special character or the character of the woodland area?

81. It is your officers' view that the works would not fail to secure the maintenance of that character. It has been assessed that there would be no significant impact from the loss of these trees to the special character of the woodland or the woodland character of the area.
82. When considering the effects on the 'woodland character of the area' it has been accepted that the felling would result in the loss of boundary trees, which may impact the local amenity externally, however internally, the loss will be in an isolated area and will be transitory by users of the path.
83. Furthermore, as the trees sit on the southern boundary of the site, they are casting shade to a large section of woodland. By removing these trees, there will be an amount of natural increase of woodland flora and new growth generated from the trees that are subjected to increased light. The new native replacement planting secured by condition will receive plenty of light to aid establishment. The visual amenity loss of the three trees will diminish over time once the new trees start to fill the space. Smaller native trees planted along the boundary with larger trees planted further back will introduce a graduated woodland edge of native trees, rather than a sharp edge occupied by non-native trees.
84. Officers have undertaken a further recent site visit to make an assessment of what impact the proposed works would have on the woodland character of the area, which are summarised in the following paragraphs.

Impact on special character of the woodland

85. The loss of the trees in the view of officers will not result in any failure to secure the maintenance of the special character of the woodland, the area due to the fact that the woodland is inherently of mixed and varied types and the loss of the trees in question will not change that special character or fail to secure its maintenance

Impacts work would have to the woodland character of the area from within Marlhill Copse

86. T119 - Viewed from the public path, the removal of this tree would result in the biggest impact and this is due to the lack of understory. The tree is located at one of the narrowest points where the path meets the rear of the properties, The impact will be transitory and new tree planting will provide infill and start to provide a continuous green corridor, which at present it is lacking.
87. T120 – Viewed from the public path, there is a good mix of young and semi-mature understory beneath the canopy of this trees, therefore the removal of the tree will not greatly impact the woodland feel and the canopy of the understory will provide the amenity and woodland character. The removal of the tree will provide more light to the understory which will flourish and continue to increase the woodland character.

88. T124 – Viewed from the public path, the canopy of the tree is hardly visible the canopy of the semi mature trees surrounding the tree, therefore the removal of this tree will have little impact to the woodland character of the area as the remaining trees will provide the woodland feel from the path.
89. T162 – Viewed from the public path, the ash is suppressed beneath the canopy of its much larger prominent neighbour. The tree has been cut back to near boundary some time ago and offers very little amenity and is both of poor form and condition. Due to its size and location, it is felt that the trees removal would not greatly impact the woodland character of the area.

Impact to the woodland character to the area from public streets

90. T119 – As viewed from Maryland Close. The tree has signs of historic damage from failure and has resulted in an unnatural high canopy. The woodland backdrop can be seen through the stems of the tree, therefore can be demonstrated that the loss of the tree will have an impact to the skyline, however the trees behind will then provide the woodland character of the area when viewed from a public area.
91. T120 – As viewed from Maryland Close. The removal of this tree will have a greater impact to the skyline than T124, however there is a prominent tree to the west that will provide amenity close to the boundary of the properties. Further back there are mature broadleaved species that will still provide a woodland character to the area when viewed from the public road. It is therefore considered that the loss of this tree would not result in the loss of the woodland character to the local amenity.
92. T124 - As viewed from St Helena Gardens. The removal of this tree will impact the skyline, however there is a pine to the west of this tree and the woodland to the rear will then become the main view of the woodland. Although slightly lower, due to the age and topography of the land, the loss of the tree would not adversely impact the woodland character of the area when viewed from the public road.
93. T162 – The ash is barely visible from the public streets as it is suppressed beneath the canopy of its neighbour. The removal of the tree would largely not be noticeable and would not result in any impact to the skyline. The trees loss would not be detrimental to the woodland character of the area. Any impact will be replaced with suitable native tree planting

(4) Should the application be granted nonetheless?

94. National PPG sets out the factors that are relevant to considering an application under Regulation 17(1). It states:

“In considering an application, 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. The authority must be clear about what work it will allow and any associated conditions. Appeals against an authority’s decision to refuse consent can be made to the Secretary of State.

In certain circumstances, compensation may be payable by the local planning authority for loss or damage which results from the authority refusing consent or

granting consent with conditions. However, there are strict criteria and limitations on what compensation may be payable.”

95. It goes on to state:

When considering an application the authority is advised to:

assess the amenity value of the tree or woodland and the likely impact of the proposal on the amenity of the area;

consider, in the light of this assessment, whether or not the proposal is justified, having regard to the reasons and additional information put forward in support of it;

*consider whether any loss or damage is likely to arise if consent is refused or granted subject to conditions;
consider whether any requirements apply in regard to protected species;*

*consider other material considerations, including development plan policies where relevant; and
ensure that appropriate expertise informs its decision.*

Authorities should bear in mind that they may be liable to pay compensation for loss or damage as a result of refusing consent or granting consent subject to conditions. However, if the authority believes that some loss or damage is foreseeable, it should not grant consent automatically. It should take this factor into account alongside other key considerations, such as the amenity value of the tree and the justification for the proposed works, before reaching its final decision.

The amenity value of the trees in question, the woodland in question, and the likely impact of the proposal on the amenity of the area

96. The assessment of the amenity values of each of the trees in question has been considered previously by officers when granting the previous (now quashed) consent under delegated powers. That analysis was in summary that the trees offer “offer a high visual amenity to the local area”

97. When assessing the impact on the amenity of the area, the special character of the woodland and woodland character of the area is clearly relevant. The analysis of that question is set out above in section 3. It is your officer’s view that there will be a significant impact caused by the works to the amenity of the area.:

98. The PPG states that local planning authorities should consider development plan policies where relevant. There is nothing specific in the Council’s adopted development plan which deals with how the Council should approach TPO applications. Policy SDP12 refers to landscape treatments in the context of development proposals which, amongst other matters, should “retain and/or enhance important landscape and wildlife habitat features”. Although not directly applicable to this application which does not concern a proposal for development, officers when assessing the impact on amenity have taken into

account the fact that Marlhill Copse is an important landscape feature and the need to make sure that where possible this is retained and enhanced.

Risk of harm to visitors and neighbouring properties posed by the trees

99. This is clearly a material consideration which needs to be weighed in the balance. The assessment of risk of harm is set out above.

Compensation

100. The Council can be liable for compensation in the event it refuses an application to consent. However, under Regulation 24(3) compensation is limited where the works are “forestry operations” in a woodland area. Regulation 24(3) states as follows:

“(3) Where the authority refuse consent under these Regulations for the felling in the course of forestry operations of any part of a woodland area—
(a) they shall not be required to pay compensation to any person other than the owner of the land;
(b) they shall not be required to pay compensation if more than 12 months have elapsed since the date of the authority's decision or, where such a decision is subject to an appeal to the Secretary of State, the date of the final determination of the appeal; and
(c) such compensation shall be limited to an amount equal to any depreciation in the value of the trees which is attributable to deterioration in the quality of the timber in consequence of the refusal.”

101. There is no definition of forestry operations for the purposes of the TPO Regs or in the Town and Country Planning Act 1990. Given the broad dictionary definition of forestry (as used in the UKFS), it is your officer’s view that these are forestry operations in a woodland area and therefore any compensation is limited to an amount equal to any depreciation in the value of the trees which is attributable to deterioration in the quality of the timber in consequence of the refusal.

102. If these works are not considered forestry operations, then there is a risk of exposure to liability for a greater level of compensation as Regulation 24(1) states:

(1) If, on a claim under this regulation, a person establishes that loss or damage has been caused or incurred in consequence of—
(a) the refusal of any consent required under these Regulations;
(b) the grant of any such consent subject to conditions; or
(c) the refusal of any consent, agreement or approval required under such a condition,
that person shall, subject to paragraphs (3) and (4), be entitled to compensation from the authority.
(2) No claim, other than a claim made under paragraph (3), may be made under this regulation—
(a) if more than 12 months have elapsed since the date of the authority's decision or, where

such a decision is the subject of an appeal to the Secretary of State, the date of the final determination of the appeal; or
(b) if the amount in respect of which the claim would otherwise have been made is less than £500.

Conclusion under Section 4.

103. It is for the Panel to assess whether the risk to the safety of occupiers of neighbouring properties, and to the safety of visitors to the woodlands themselves, together the associated risk and level of compensation, outweighs any harm to amenity that may result from the felling of the remaining four trees, but the view of officers is given the significant safety risk posed by the trees in question to both visitors to the woodland and to neighbouring properties, and the fact that suitable replanting will be provided and secured by condition, that on balance those factors outweigh any harm to amenity caused by the removal of the trees in question, that consent should be granted, subject to the conditions proposed by the applicant. For the avoidance of doubt, this assessment has been carried out on the assumption that a reasonably low risk of compensation applies in this case under Regulation 24(3).

RECOMMENDATION AND REASON.

104. Grant the application to fell four remaining trees that are the subject of the application, subject to replanting conditions, on the basis that the application accords with good forestry practice and the works do not fail to secure the maintenance of the special character of the woodland or the woodland character of the area.

RESOURCE IMPLICATIONS

Capital/Revenue

105. As set out in the body of the report.

Property/Other

106. As set out in the body of the report.

LEGAL IMPLICATIONS

Statutory power to undertake proposals in the report:

107. As set out in the body of the report.

Other Legal Implications:

108. As set out in the body of the report.

RISK MANAGEMENT IMPLICATIONS

109. As set out in the body of the report.

POLICY FRAMEWORK IMPLICATIONS

110. As set out in the body of the report.

KEY DECISION?	No
WARDS/COMMUNITIES AFFECTED:	Bitterne Park

<u>SUPPORTING DOCUMENTATION</u>	
Appendices	
1.	Application and selected supporting documents
2.	Site Plan
3.	Objections

Documents In Members' Rooms

1.	None	
Equality Impact Assessment		
Do the implications/subject of the report require an Equality and Safety Impact Assessment (ESIA) to be carried out.		No
Data Protection Impact Assessment		
Do the implications/subject of the report require a Data Protection Impact Assessment (DPIA) to be carried out.		No
Other Background Documents		
Other Background documents available for inspection at:		
Title of Background Paper(s)		Relevant Paragraph of the Access to Information Procedure Rules / Schedule 12A allowing document to be Exempt/Confidential (if applicable)
1.	None	