

DECISION-MAKER:	Planning and Rights of Way Panel		
SUBJECT:	The application to fell trees subject to a tree preservation order at Marlhill Copse		
	SUPPLEMENTAL UPDATE REPORT		
DATE OF DECISION:	23 June 2020		
REPORT OF:	Executive Director of Place		
<u>CONTACT DETAILS</u>			
AUTHOR:	Name:	Gary Claydon-Bone	Tel: 023 8083 3005
	E-mail:	Gary.claydon-bone@southampton.gov.uk	
Director	Name:	Kate Martin	Tel: 023 8083 3005
	E-mail:	Kate.martin@southampton.gov.uk	

STATEMENT OF CONFIDENTIALITY	
None	
BRIEF SUMMARY	
To consider application 20/00067/TPO	
RECOMMENDATIONS:	
	(i) As per main report
REASONS FOR REPORT RECOMMENDATIONS	
1.	As per main report
ALTERNATIVE OPTIONS CONSIDERED AND REJECTED	
	As per main report
DETAIL (Including consultation carried out)	
1.	This is a supplementary update report to the officers' report submitted to members in advance of the meeting of the PROW Panel scheduled for Tuesday 23 June.
2.	This supplementary report has been prepared in order to: <ul style="list-style-type: none"> a. amend parts of the original report (see Section A);

- b. address issues raised in further representations made by members of public in advance of the meeting (see Section B);
- c. to summarise for the benefit of the members of the PROW Panel responses from both internal and external consultees on the application received since the original report was prepared or those which were previously omitted (Section C); and
- d. to update members on developments since that report was published (Section D);
- e. to set out the framework for granting consent subject to conditions (Section E); and
- f. to update the conclusions in the original report in respect of the main legal tests when determining the application (Section F).

SECTION A: AMENDMENTS TO AND CLARIFICATIONS OF ORIGINAL REPORT

3. In the recommendation, delete “ratio of 1:1” and replace with “ratio of 3:1”.
4. In paragraph 18, after “site visit”, insert “on 12th March following an office meeting on 28th February 2020”.
5. In paragraph 22 after “FC” insert “on 18th March 2020”.
6. By way of clarification in relation to paragraph 17, the covering report did not recommend all five trees for felling. Tree 119 was recommended just for deadwood removal. Tree 124 was recommended for felling to create a 10m monolith above ground level. It should also be noted that that the notice received by the Applicant on 18 February 2020 stating that the SIAL intended to carry out works to remove a serious risk of harm only gave notice of the removal of limbs and deadwood, and not for felling of the trees. That is not inconsistent with the application (which is to fell all the trees concerned): the Applicant for the purpose of this application is not asserting that the felling of the trees is warranted to remove an immediate risk of serious harm: its position is that the trees pose a significant safety risk.

7. Furthermore the council can't comment on the precise reasons why or how the airport consultant updated his recommendation to complete felling for all five trees. It is the council's understanding (based on the letter from SIAL of 24th March) that the reasons that five trees were recommended for felling were because the trees were considered high risk of failure following the occurrence of storms which took place after the site visits took place. Officers note the site visits were undertaken on 3rd and 4th February, whilst the report was dated 17th February.

8. Delete and replace the first sentence in paragraph 24 of the original report with the following:

“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 on 5 May 2020, rather than by the PROW Panel.”

9. After paragraph 98 insert the following paragraphs:

98A. Marlhill Copse falls within the Itchen Valley Conservation Area. The 1993 Conservation Strategy notes that the trees are protected by the TPO and states

“The Copse itself lies on an escarpment and its mature trees form a very important element in the landscape of this part of the City, providing a very effective transition in visual terms between the City and its surrounding countryside.”

98B. Marlhill Copse is part of a Site of Importance for Nature Conservation (SINC) as designated on the policies map, which is a local nature conservation designation. Marlhill Copse and Meadow is designated for reasons 1A (ancient and semi natural woodland) and 1B (other ancient woodland where there is a significant element of the original semi-natural

woodland surviving). The trees subject of this application are, however, outside of the SINC.

SECTION B: SUMMARY OF REPRESENTATIONS

10. Additional representations received since the publication of the original report have been published separately.
11. The issues raised in the objections received are summarised as below:
 - a. An earlier application by the Airport in 2019 and airport expansion;
 - b. Alleged/unexplained inconsistencies between the various reports submitted by the Applicant;
 - c. The trees' capital asset value;
 - d. Age of Monterey Pines;
 - e. Lack of Quantitative Risk Assessment Analysis;
 - f. Alternatives – diverting the footpath;
 - g. Loss of flood limiting value;
 - h. Impact on biodiversity, habitats, wildlife; and
 - i. Impact on the landscape/conservation area/historic environment.

Earlier application in 2019 for felling of the trees and airport expansion requiring lower flight path

12. In 2019, the Forestry Commission consulted the council in connection with an application for a felling licence to fell 26 trees in Marlhill Copse on the grounds of aviation safety. The application included the proposed felling of the three Monterey Pines. The council's PROW panel considered the application and offered no objection. This decision was challenged in the high court but found to be lawful. The Forestry Commission subsequently referred the application to the council to determine under the TPO Regulations. That application is still

outstanding and has not been determined by the council because the council is yet to receive further information from the airport.

13. SIAL has not advanced for the purposes of this application aviation safety as a reason in support of this application. Members therefore should consider this application on the basis of the material submitted to the Council by SIAL.
14. The current proposals for airport expansion and the PROW panel's objection to them, is not relevant to this application.

Inconsistencies between Tree Survey reports submitted by SIAL

15. It is correct that the original recommendations contained in the Tree Surveys Report in February 2020 have changed since February. However, officers do not consider that they are inconsistencies between the various reports submitted by Tree Surveys. It is correct to note that the original recommendations in the February 2020 Tree Surveys report did not contain recommendations to fell all 5 trees. However, that recommendation was updated following further site visits and the view of the Applicant's consultant is that all 5 trees should be felled. The rationale behind this is set out in the letter from the Applicant's consultant dated 24th March 2020 appended at page 38 of the main agenda pack.
16. It should be noted that an objector has highlighted the lack of decay in certain of the trees yet nonetheless the recommendation advanced by SIAL is to fell those trees (whereas some trees with identified decay were originally recommended for retention). As set out in the earlier report, the reason that the trees are considered to pose a safety risk relates to the risk of the trees uprooting or further limb failures primarily based on the age and particular characteristics of the species of tree. In the view of officers the presence or absence of decay is clearly relevant to the risk posed by the trees but not determinative.

The trees' capital asset value

17. Officers have no reason to disagree with the CAVAT valuation submitted by an objector in a report received by the Council on 18 July 2020 prepared by an arboricultural consultant (the additional report is included at Additional Information 6). It should be noted that CAVATs are not routinely carried out by officers for TPO applications: they seek to ascribe a monetary value to the

amenity value of trees, which officers use for the purposes of development sites and for prosecution/sentencing in respect of unauthorised felling. In any event, officers do not consider that a high CAVAT value on its own outweigh the reasons why officers consider the trees should be felled.

Age of trees

18. An objector submits that the trees were planted circa 1912 primarily on the basis of reviewing an OS 25 inch/mile map of 1908 but are on the 1931 map and inspection of the tree rings from another Monterey Pine felled at some point between 2000 and 2003. The tree survey report gives a date range between 1860 and 1911. Whilst officers can't give a precise date (and do not have any first hand evidence of the felled tree referred to by this objector), officers consider that they are at least 100 years old. On any analysis, if they were planted in 1912, they would still be of an age where failure is likely to occur (see the original officer report at paragraph 61: officers agree with the view of Tree Surveys that the average life span is 80 – 90 years old).

Lack of Quantitative Risk Assessment Analysis (QTRA)

19. Officers consider that a QTRA is not necessary in all cases when assessing the safety posed by trees. The council does not hold any data on tree failures in Marlhill Copse and is not basing its assessment on any quantitative data. Officers are basing their recommendation on the age and species of the trees, which is considered an appropriate approach. There are various ways of assessing safety risks posed by trees. QTRA is one way but not the only one; it is acceptable to carry out an assessment based on a site inspection. Officers are satisfied that the inspection carried out SIAL is a professionally acceptable way. Officers note that no QTRA has been submitted by any other party in support or against the application. For the avoidance of doubt, officers do not consider merely advising level of risk provides adequate protection.

Alternatives – diverting footpath

20. Officers consider that whilst diverting the footpath may remove the risk to some visitors of the area, it would not remove the risk of damage to neighbouring properties.

Flooding

21. An objector has queried why the flood limiting value has not been calculated. Officers consider that it is not necessary as it is clear on any analysis that the removal of the trees will have negligible impact on flooding due to the topography of the land, as the run off is away from residential properties.

Biodiversity, habitats and wildlife

22. Several objectors have raised potential harm to biodiversity, habitats and wildlife (including bats and badgers, which are protected species).
23. These factors are referred to in the UKFS at Chapter 6 as being relevant in the assessment of good forestry practice.
24. In respect of biodiversity, UKFS Good Forestry Practice requirement (1) states “Forests and woodlands should be managed in a way that conserves or enhances biodiversity”.
25. The applicant will need to abide by the provisions of the Habitats Regulations 2017 and the Protection of Badgers 1992 and, prior to removal of the trees, will be expected to assess the trees and the surrounding area for the possible presence of protected species and to have obtained the appropriate licences to undertake the consented works.
26. Marlhill Copse is part of a Site of Importance for Nature Conservation (“SINC”) as designated on the policies map of the local plan.
27. The Core Strategy (2010 and as amended in 2015) policy CS22 (from page 75) states the Council will promote biodiversity by ensuring development is unlikely to have an unacceptable impact on local designations, and that any such impact is avoided, mitigated or as a last resort compensated for. The policy also safeguards the green grid of wildlife corridors
28. The relevant Local Plan (2006) policy NE3 is no longer saved. However the supporting text to this policy, paragraph 3.10 and 3.11, is saved and provides a general description of the city’s SINC’s. Moreover Appendix 4 (pages 181 – 184) is saved and lists the SINC’s. Marlhill Copse and Meadow is designated for reasons 1A (ancient and semi natural woodland) and 1B (other ancient woodland

where there is a significant element of the original semi-natural woodland surviving).

29. This designation of the Copse as a SINC in the local development plan reflects the importance of the Marlhill Copse in terms of biodiversity and also is relevant to understanding what the special character of the woodland or woodland character of the area is. It is recognised that removal of the trees will result in some habitat loss and that there will be some impact on biodiversity but it will not undermine the status of the site overall as SINC. Furthermore, any impact be mitigated over the medium to long term as the replacement trees grow.

Conservation area/historic environment

30. The representations state that there will be harm to the conservation area. It can be inferred from the consultation response of the council's Historic Environment Officer that they also consider there to be harm to the conservation area. The response from the Council's heritage officers is set out in detail below. The council's heritage officer has subsequently advised that the harm arising from the proposed felling is considered to be less than substantial.

31. It has been noted that the trees are located within the Itchen Valley Conservation Area. Section 72 of the Planning and Listed Buildings Act 1990 states the following:

“(1) In the exercise, with respect to any buildings or other land in a conservation area, of any functions under or by virtue of any of the provisions mentioned in subsection (2), special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area.

(2) The provisions referred to in subsection (1) are the planning Acts and Part I of the Historic Buildings and Ancient Monuments Act 1953 and sections 70 and 73 of the Leasehold Reform, Housing and Urban Development Act 1993

(3) In subsection (2), references to provisions of the Leasehold Reform, Housing and Urban Development Act 1993 include references to those provisions as they have effect by virtue of section 118(1) of the Housing Act 1996.”

32. Therefore, when assessing whether or not the proposal accords with good forestry practice under Regulation 17(3), members are under a statutory obligation to pay special attention to the desirability of preserving or enhancing the character or appearance of the Itchen Valley Conservation Area. The effect of section 72 is that it creates a strong presumption against granting permission

for works to a tree which would harm the character or appearance of a conservation area: the desirability of preserving the character or appearance of the area is a consideration of considerable importance and weight when assessing whether the proposal accords with good forestry practice.

33. That presumption can be outweighed by other considerations including the risk of harm.
34. Equally, if members take the view that the proposal does not accord with good forestry practice or that the proposal fails to maintain the special woodland character or woodland character of the area, when assessing whether on balance consent should nonetheless be granted, the same presumption against granting consent and considerable importance and weight should be attached to the desirability of preserving the character or appearance of the Conservation Area.

Climate change/climate emergency/Green City Charter/carbon capture

35. In connection with these matters, UKFS Good Forestry Practice Requirement (1) states “Forest Management should contribute to climate change over the long term through the net capture and storage of carbon in the forest ecosystem and in wood products”. The council has declared a climate emergency and adopted a Green City Charter that aims to protect and enhance our natural environment.
36. The council's Green City Lead officer considers that the felled trees would represent a loss in sequestered carbon and that it is recognised that large mature trees provide a valuable asset in this respect and cannot be readily offset by tree replacement although replacement will provide some mitigation.

SECTION C: EXTERNAL AND INTERNAL CONSULTATION RESPONSES

(a) Forestry Commission

37. The Forestry Commission has been asked to provide a view as to whether or not it agrees that the proposal is in accordance with good forestry practice. The comment from the relevant Field Manager is as follows:

“Thanks for getting back to me. The application form submitted from a forestry operations perspective is difficult to review. The details for each tree is based upon the health of each tree. I do feel that an arboriculturalist is better placed to comment on the rationale of felling the trees. If this was a felling application and

there was an independent arb specialist report stating these trees were dangerous and they intended to replace the felled trees we would grant the felling of the tree and the proposed restocking. I do have a concern over the statement of “beyond useful life expectancy” and what exactly this means. “

38. In response to its concern over “beyond useful life expectancy”, that term is used in the Applicant’s arboricultural report. Officers agree with this assessment and the use of this wording. Given the estimated age of these trees, they would fit in with the age categorisation of being over-mature. This is to say that they have passed the average life expectancy of the species and have moved on from maturity to over-mature. Due to the concerns associated with failures in over-mature Monterey Pines, the tree, due to their location, cannot be considered to be retained safely. The environmental benefits (usefulness) of these trees are accepted, however, if a tree becomes a hazard, its usefulness has to be considered against the risk that it poses. Given the age, location and species of these trees, it is considered that the risk associated with retention, is higher than its usefulness, therefore it is beyond useful life expectancy.

(b) Historic Environment Officer

39. The original comments from the council’s Historic Environment Officer are set out in full below and have been published as Additional Item 3. The officer states:

“Background

- The 5no. trees affected sit within Marlhill Copse which falls within the Itchen Valley Conservation Area and thus are part of its overall character.
- The trees also sit outside, but adjacent to, Town Hill Park - a Registered Park and Garden.

Assessment and advice

Historic maps appear to indicate that the trees in question post-date 1909 and were probably introduced when the secondary driveway was laid out as part of Guthrie’s landscaping of Town Hill House park estate that began around 1912 and completed prior to 1933. Consequently, the trees in this area are unlikely to be 160 years old as claimed and they are more likely to be of around 90-100 years in age.

Therefore, although it is acknowledged that various species of tree have a finite lifespan, and that trees are a dynamic feature of the environment, the loss of the trees would only be supported should you concur with the Tree Surgeon's findings in that they are in a poor state of health and/or are of immediate risk of failure. If the trees are to be removed, replacements of an appropriate species would be encouraged to ensure that the setting of the above heritage assets would be maintained."

SECTION D: FURTHER DEVELOPMENTS

40. On 29 May 2020 SIAL sent to the council a draft woodland management plan to be approved by the Forestry Commission. Officers understand that SIAL will publish it shortly for public consultation.
41. Officers have only had limited time to review the document and have not provided any feedback or comments to the airport. That plan is only in draft but it contains recommendations to remove the trees in question as part of a wider plan to manage boundary trees at the Copse.
42. Until that woodland management plan has been approved by the Forestry Commission very little weight can be attached to it.
43. It is not critical that a woodland management plan is in place, although as noted by officers in the main report the UKFS recommends management plans and stresses their importance when it comes to woodland management.
44. It is considered that given the views of the Forestry Commission as set out above, and given the safety risk posed by the trees, that the application should be determined now rather than to await the approval of that plan by the Forestry Commission.
45. Following confirmation that its schedule of recommendations required correcting (see paragraph 62 of the original report), SIAL has now submitted a revised schedule to go alongside its application, a copy of which has been published as Additional Item 8.

SECTION E - CONDITIONS

46. The council may refuse consent or grant consent unconditionally or subject to conditions. Paragraph 2 of Regulation 17 to the TPO Regulations sets out what conditions may be imposed:

- a. conditions within subsection (4) of section 202D (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.

47. Subsection (4) of section 202D(4) sets out that consent may be subject to:

- a. conditions requiring trees to be planted;
- b. conditions about the planting of any trees required to be planted by conditions within paragraph (a), including conditions about how, where or when planting is to be done;
- c. conditions requiring things to be done, or installed, for the protection of any trees planted in pursuance of conditions within paragraph (a).

48. The Planning Practice Guidance states:

“A condition should:

- relate to the authorised work;
- be fair and reasonable in the circumstances of each case;
- be imposed only where there is a definite need for it; and
- be worded precisely, so the applicant is left in no doubt about its interpretation and the authority is satisfied it can be enforced.

The authority is responsible for enforcing all conditions in a consent, so its decision notice should clearly state the reasons for its conditions. This is particularly important where repeated operations have been applied for. In such cases the authority should make the scope, timing and limit of the work clear.

The authority should use its power to impose conditions to ensure that tree work or planting is carried out in accordance with good arboricultural practice.”

SECTION F – UPDATES ON CONCLUSIONS IN ORIGINAL REPORT

Do the proposed works accord with the practice of good forestry?

49. The UK Forestry Standard notes that the UK is “committed to maintaining or increasing its forest area” and that “there is a presumption against the removal of woodland and the loss of forest cover”.
50. In summary, officers note some of the UKFS good forestry practice requirements may point to the retention of the trees (for reasons of climate change, biodiversity and habitat, historic environment etc), and also the fact that the UKFS recognises the complexities of forest management and of the need to apply the requirements flexibly and with an appropriate level of professional expertise. With this in mind, the question is whether the proposal accords with the UKFS taken as a whole.
51. Officers have given greater weight to the safety risk and consider that this outweighs other considerations including any impacts on climate change, biodiversity and to the historic environment, when reaching their view that the proposed works accord with the UKFS as a whole.
52. They also consider that the safety risk outweighs the strong presumption under section 72 of the Planning and Listed Building Act 1990 against granting consent for this proposal which would harm the Conservation Area and despite attaching considerable weight and importance attached to the desirability of enhancing and preserving the Conservation Area, consider that this proposal would nonetheless accord with the practice of good forestry.

Do the proposed works fail to secure the maintenance of the special character of the woodland or the woodland character of the area?

53. Whilst officers note the comments of the council’s Historic Environment Officer in relation to the impact on the conservation area, and the designation of the woodland as a SINC, officers remain of the view for the reasons set out in the

original report that the works do not fail to secure the maintenance of the special character of the woodland or the woodland character of the area.

Should the council grant consent nonetheless?

54. The Panel will note that as stated at paragraph 103 of the original report, 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 with the associated risk and level of compensation, outweighs any harm to amenity that may result from the felling of the remaining four trees as well as the other factors raised in the representations and consultee responses in support of their retention. The view of officers having considered these further representations is that 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 and other factors raised by objectors and consultees in support of the trees' retention, including the considerable importance and weight attached to the desirability of preserving and enhancing the character of the area and the strong presumption that permission should be refused in circumstances where there is harm to the Itchen Valley Conservation Area. Therefore officers recommend that consent should be granted, subject to the replanting conditions.

RESOURCE IMPLICATIONS

Capital/Revenue

	As per main report

Property/Other

	As per main report

LEGAL IMPLICATIONS

Statutory power to undertake proposals in the report:

	As per main report

--	--

RISK MANAGEMENT IMPLICATIONS	
	As per main report
POLICY FRAMEWORK IMPLICATIONS	
	As per main report

KEY DECISION?	No
WARDS/COMMUNITIES AFFECTED:	
<u>SUPPORTING DOCUMENTATION</u>	
Additional Information	
1.	Reponses between 15 – 22 June 2020
2.	Responses received on 22 June 2020
3.	Comments on the report from an objector
4.	Tree survey by objectors
5.	Tree survey notes
6.	Airport response on report
7.	revised schedule

Documents In Members' Rooms

1.	
2.	

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.	

2.		
----	--	--