

DECISION-MAKER:	PLANNING AND RIGHTS OF WAY PANEL
SUBJECT:	Tree work application to fell three trees within Marlhill Copse that are protected by a tree preservation order
DATE OF DECISION:	2 nd February 2021
REPORT OF:	HEAD OF CITY SERVICES

<u>CONTACT DETAILS</u>			
Head of Service	Title	Executive Director Place	
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STATEMENT OF CONFIDENTIALITY	
NONE	
BRIEF SUMMARY	
To consider the content within application 20/00184/TPO for the felling of 1 x Monterey Pine and 2 x Norway Maples both located within Marlhill Copse.	
RECOMMENDATIONS:	
(i)	To grant consent to the felling of one Monterey Pine within Marlhill Copse with an attached condition to replant one native tree species.
(ii)	To refuse consent to the felling of 2 Norway Maple's within Marlhill Copse.
REASONS FOR REPORT RECOMMENDATIONS	
1.	The requested work in connection with the Monterey Pine accords with the practice of good forestry and secures the maintenance of the special character of the woodland and the woodland character of the area.
2.	The requested work in connection with the Norway Maples does not accord with the practice of good forestry on the grounds of safety.
ALTERNATIVE OPTIONS CONSIDERED AND REJECTED	
	To refuse the consent to fell the Monterey Pine would put the public and neighbouring properties at risk. To approve the felling of the Norway Maples would have a negative impact to the amenity.
DETAIL (Including consultation carried out)	
1	An application was received at the council from an agent acting on behalf of the Gregg School. The application was registered and has reference number 20/00184/TPO.

2	The applicant seeks permission to fell one Monterey Pine and two Norway Maples that are protected under A1 of The Southampton (Townhill Park House) (No 2) Tree Preservation Order 1995.
3	An Area order classification, such as A1 of this order, will only protect trees that were present at the time of making the order and relating to the description applied. In this case, it protects all hardwood and coniferous trees that were present in 1995 and before. Any tree younger that grew after the making of this order will not be protected.
4	The majority of Marlhill Copse is designated as a Site of Importance to Nature Conservation (SINC) however the three trees that are subject of the application are not within the SINC. The three trees do however fall within the Itchen Valley Conservation Area.
4	There have been three objections to this application and the main points of the objections are as follows. <ul style="list-style-type: none"> • The Gregg School do not own the trees • Poor form is not a justification to fell a tree • Loss of amenity • Impact on wildlife • Works being within a conservation area • Unclear why trees are requested to be felled • No Maples in the area identified on the application.
5	The Councils Historic Environment Officer has been consulted and has provided the following comments. ‘the loss of a small number of individual trees within this much larger grouping would not adversely harm the overall character or appearance of the conservation area, providing the works can be demonstrated to be necessary as per the advice above, and that any loss of trees would be replaced or better managed’
6	5/11/20 – A site visit was made by two tree officers from the council’s tree team for the purpose of assessing the detail within the application and to review the condition of the trees in relation to what has been stated.
7	The Monterey pine, which was marked as T1 in the application has been described as poor form with a large section of the canopy missing.
8	This tree is a single stemmed tree that bifurcates to two co-dominant stems at around 5 metres from ground level.
9	The southern stem has had several limbs removed which has resulted in an unbalanced and high canopy on the southern and western aspect of the tree. The pruning cuts are poor and have not been completed to a decent standard that will allow the tree to occlude over the pruning cuts This has resulted in several stubs with no growth. It is not known if the limbs were removed due to failures or for alternative reasons. There are signs of branch failure in the canopy, some of which are recent.
10	The northern stem is clear of growth until it reaches its full height where there are two lateral limbs growing which extend outward over the access path leading up to the gated entrance of the Gregg School.

11	It is evident that these two stems have both fractured and formed hazard beams with horizontal splits along the branches. These are directly over the access path to the school.
12	On its own, a request to remove these two damaged limbs would be perfectly reasonable, due to the risk they present to users of the wood and path.
13	Given that the removal of the hazard beams is acceptable for safety reasons, this then leads to the question as to what impact such work would have on the remaining tree.
14	After the hazard beams have been removed, this would leave this stem of the tree void of any growth and as these trees will not naturally produce new growth from dormant buds, the stem would remain void of growth and would decline over time as the tree would naturally shut down the vascular system of the stem. Given enough time, if this stem is not completely removed, it would naturally degrade which would cause a safety issue once the structural integrity of the wood is lost
15	The other issue noted with the tree is the union where it bifurcates on the main stem. There is evidence of a compression union with additional growth being formed on one side of the tree. Although this is not a significant concern at present, it will continue to form a weak point on the stem and with the additional exposure, may place additional stress on this point and a potential failure is possible.
16	Given that the northern stem canopy has already shown signs of failures and accompanied with a compression union, there are concerns that the remaining tree would be in a higher risk of failure occurring, therefore officers accept that there are strong grounds to justify that the tree should be removed based on safety concerns with the addition of future issues relating to exposure making the tree more susceptible for failures
17	Additional to this is the tree's age and species as it is understood that Monterey Pines that are old are at a higher risk of branch failures. This is not to say that just because of its age and species it must be removed, however if there are signs of this occurring, it must be a consideration at some point. Signs of failures are present around the canopy of this tree.
18	The issues that relate to limb failure is not only the risk that they pose to people beneath the tree if a limb fails, but also what the impact is to the tree.
19	Trees grow reactively and adjust to their surroundings. This can be seen by a leaning out from a group of trees as it searches for light, or by putting on additional wood in areas that are under greater strain, however this is something that happens gradually and over a number of annual grow periods.
20	What trees are not very good at is adapting to sudden changes. Therefore, the continual loss of limbs in the canopy can be of concern due to the changes in the wind dynamics around the canopy. This sudden change can then lead to additional failures of limbs that have previously benefited from relative protection from its neighbours. The sudden change in stresses can cause failure, and then the cycle may start again with other limbs.
21	The two other trees that are subject of the application are Norway Maples that are growing on the boundary of the site adjoining 25 Wilmington Close.

22	The application describes these trees as being poor form and leaning on fences and garden outbuildings.
23	The officers are not in agreement with this statement and consider that both trees' form is due to being woodland edge trees that are growing outwardly toward the sun, which is known as phototropic growth. Therefore, the growth is considered natural and poor form is subjective.
24	Neither of the two trees are in contact with the outbuilding and therefore not causing any direct damage.
25	Officers are of the opinion that both trees are healthy and that the issues relating to the neighbouring property could easily be addressed by lesser tree surgery works to lift the canopy to clear the outbuilding roof.
26	When assessing the application to fell trees that are within a woodland, officers must apply regulation 17(3) of The Town and Country Planning (Tree Preservation)(England) Regulations 2012.
27	This regulation states – ‘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’.
28	The officers have considered the required tests set out within this regulation and have formed the following opinion.
29	Does the application relate to an area of woodland? The TPO is not a ‘woodland’ TPO. However, the Department for Environment, Food and Rural Affairs (DEFRA) classifies the location to be a Broadleaved Woodland and the definition of ‘woodland’ within the UK Forestry Standard (UKFS) leads officers to agree that the trees are within a woodland.
30	Does the work accord with good forestry practice? The practice of good forestry” is not defined in the TPO regulations. However, the 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 within the national planning practice 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’. The UKFS states that the UKFS requirements are divided into legal requirements and good forestry practice requirements. The requirements are

	<p>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.”</p>
31	<p>Of relevance to this application is section 6.5 of the UKFS, which refers to people and includes guidance on access, including visitor safety. Page 134 refers to employer’s health and safety legal requirements. Visitor health and safety is set out at page 135. The UKFS states the following</p> <p><i>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 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:</i></p> <ul style="list-style-type: none"> <i>• 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;</i> <i>• 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 they are there with or without 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.</i>
32	<p>It is therefore the officers’ opinion that the condition of the Monterey pine presents a risk to visitors or trespassers and that the landowner must discharge their duty of care by taking appropriate action, which may involve the felling of the tree. On this basis, it is accepted that the work does accord with good forestry practice.</p>
33	<p>In relation to the request to fell the two Norway maples, officers felt that there was no underlying condition that rendered them unsafe and therefore the duty under the Occupiers Liability Act is not engaged. As such it is not accepted that the felling of these two trees is regarded as good forestry practice in terms of the safety risks to the public based on their form or their location adjacent to an outbuilding. No other reasons have been given for their felling.</p>

34	<p>Officers have gone on to consider the remaining elements of regulation 17(3) of the TPO regulations and whether the felling of the trees would fail to secure (a) the maintenance of the special character of the woodland or (b) the woodland character of the area. Although officers do not agree that the felling of the Norway Maples meets with good forestry practice and therefore does not satisfy the test in the first limb of regulation 17(3) , the further assessment of (a) and (b) above, have also been considered.</p>
35	<p>The special Character - Officers have considered what the special character of the area is and agree that in a large section of the copse, it conforms with the description as detailed by DEFRA as being a broadleaved ancient semi-natural woodland (ASNW). The area that the three subject trees are growing is just outside of the boundary of the ASNW, therefore may have a special character of its own. The Monterey pine was probably planted around 100 years or so ago and appear to one of the trees that would have lined the driveway to the house. It could be said of this individual area that the character is that of being pine dominated, therefore this character assessment will be considered alongside the desire of the UKFS to increase the footprint of the ASNW.</p>
36	<p>Considering if the work would fail to secure the maintenance of the special character of the woodland or the woodland character of the area, the officers have formed the following opinion.</p> <p>Does the work fail to secure the maintenance of the special character of the area?</p> <p>As mentioned above, the Monterey pine sits in an area of other pine trees, therefore it is felt that the loss of one of these trees would not fail to secure the special character as many other such trees would remain. After the removal of the Monterey Pine, visitors would still enjoy the other remaining pines and the character would remain to be that of a predominantly pine dominated area.</p> <p>In respect of the two Norway maples, these are on the boundary of the area where the cluster of pines are growing to where it transitions to the main woodland type, which is a mixed broadleaved woodland.</p> <p>The two trees are on the copse boundary and growing amongst several linear planted conifers, which were probably planted as a screen for the residential properties.</p> <p>This area or woodland is of a relatively young age class and does not have any redeeming features that would be classified as a special character. Therefore, if members are minded to grant consent to their removal, officers are of the opinion that the loss of these two trees would not fail to secure the maintenance of a special character.</p>
37	<p>The final test to consider is if the felling of the trees would remove the woodland character of the area.</p>

38	<p>Does the proposed felling remove the woodland character of the area?</p> <p>Officers consider that the removal of the three trees in this location would not remove the woodland character of the area, due to much of the copse still being present. Although these trees are not under the same ownership as much of the Copse, it is regarded as being within the same woodland, therefore these trees form part of the 9000 square metres of woodland that is known as Marlhill Copse.</p> <p>The Monterey pine is partially shielded from view from the public street due to other protected pine trees located in rear gardens of the adjacent properties. Internally to the site, it occupies a section of woodland on the boundary with other coniferous trees in the near vicinity with Marlhill copse as the main body of woodland surrounding the tree. The loss would open a section of the sky; however, it would not result in the loss of the woodland, and the character would still one of being a woodland.</p> <p>Although officers are not in support of the removal of the two Norway maples, if members are minded in granting consent to their removal, officers have also assessed their loss to the woodland character of the area.</p> <p>The two Norway Maples are growing amongst other trees and if removed, then the neighbouring trees would act as the face of the woodland. As above, the trees are regarded as being part of Marlhill Copse therefore these two trees are part of the same 9000 square metres as the Monterey Pine and the removal of the trees, although not supported, would not result in the loss of the woodland, and the character would still one of being a woodland.</p>
39	As all three trees are within The Itchen Valley Conservation Area, officers must also consider the impact of the felling on the conservation area.
40	The conservation area test states that the council must also pay special attention to the desirability of preserving or enhancing the character or appearance of the conservation area in accordance with section 72 of the Planning (Listed Building and Conservation Area) Act 1990.
41	To be able to assess the impact, first there must be a consideration as to what the character of the conservation area is. The Itchen Valley Conservation Area strategy document of 1993 was used to supply the details of the character of Marlhill Copse. This can be found in sections 17.2 and 17.3
42	Section 17.2 – <i>‘Marlhill Copse itself originally formed part of the Townhill Park Estate and is shown on the 1st Edition Ordnance Survey Plan dated 1871, as a woodland block running along the Itchen Escarpment. The size of the trees suggest that they were planted around 1800 and the woodland is now a fine example of mature Oak trees grown as standards. During the 1920's and 30's these were thinned, and the glades were planted up with many unusual trees</i>

	<i>and shrubs, in particular Rhododendrons, Magnolia and Nothofagus, some of which remain today’.</i>
43	Historically the copse was not the same size as it is today as the 1871 map shows that it did not extend as far to the south as present day. It appears that at some point in the 1920-30’s the driveway to the house was installed and the pine trees appear to have been planted around this time, possibly to line the driveway or mark the boundary The description of the trees in section 17.2 is in relation to woodland that existed on the 1871 map and not that of the current extended copse that now incorporates the pine trees. 17.2 gives detail over the trees within the copse that form a feature of the conservation area. It is noted that the pines have not been referenced as a notable tree species.
44	Section 17.3 – <i>‘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’.</i>
45	For the purpose of this application and assessing the impact that it has to the conservation area, officers consider that section 17.3 to be the most relevant section as the subject trees are not part of the old copse, which is referenced in section 17.2.
46	Officers have assessed the loss of the trees and the impact that this would have on the ‘effective transition in visual terms between the City and its surrounding’ and the impact on the character and appearance of the wider conservation area.
47	As can be seen earlier within this report, officers had to assess the loss of the Monterey Pine and how this would impact the woodland character of the area as part of the assessment under section 17(3) of the TCPA. As it is considered by the officers that the loss of the three trees would not remove the woodland character of the area, it therefore stands to reason in officers’ opinion that the removal of the trees within the conservation area woodland, would not remove the visual transition between the woodland and the surrounding area. Accordingly, if the trees were to be felled, the action would preserve the character of the conservation area as the effective transition in visual terms between the City and its surrounding would remain.
48	Compensation. The Council can be liable for compensation in the event it refuses an application to consent. However, under Regulation 24(3) of The Town and Country Planning (Tree Preservation) (England) Regulations 2012, compensation is limited where the works are “forestry operations” in a woodland area. Regulation 24(3) states as follows: <i>(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—</i>

(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.”

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 the officers' 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.

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.

	<p>In relation to the request to fell the Monterey Pine, it is the officers' opinion that the felling of the tree accords with the practice of good forestry and that the felling would maintain the special character and woodland character of the area and thus regulation 17(3) states that the local authority must grant consent in such circumstances. Having regard to the statutory duty under s72 of The Planning (Listed Building and Conservation Area) Act 1990, the felling of the Monterey Pine will preserve the character and appearance of the Conservation Area. On this basis, subject to a condition to replant a replacement Scots Pine in the interests of good practice, the application in this respect should be approved.</p> <p>For the Norway Maples, officers are of the opinion that the work to fell the trees, for the reason stated, does not accord with good forestry practice, therefore the local planning authority are not required to approve under regulation 17(3). However, whilst their felling will preserve the character and appearance of the conservation area, the trees are in good health and condition, have amenity value and there is no other reason to justify their felling. As such, the application in this respect should be refused.</p>
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RESOURCE IMPLICATIONS

<u>Capital/Revenue</u>

	NONE
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<u>Property/Other</u>

	NONE
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LEGAL IMPLICATIONS

<u>Statutory power to undertake proposals in the report:</u>

	The statutory duties in connection with determining the application are set out in the body of the report.
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	The Council may impose conditions in accordance with the Town and Country Planning Act 1990 and the Town and Country Planning (Tree Preservation) (England) Regulations 2012
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<u>Other Legal Implications:</u>

	NONE
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RISK MANAGEMENT IMPLICATIONS

	NONE
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POLICY FRAMEWORK IMPLICATIONS

	NONE
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KEY DECISION?	Yes/No
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WARDS/COMMUNITIES AFFECTED:	
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<u>SUPPORTING DOCUMENTATION</u>

Appendices	
1.	Photographs of Monterey Pine
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.	Yes/No
Data Protection Impact Assessment	
Do the implications/subject of the report require a Data Protection Impact Assessment (DPIA) to be carried out.	Yes/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.	