

# **TPO: T01/2018 The Distillery, Old Town Lane, Old Town, St Mary's: Confirmation of interim Tree Preservation Order (TPO)**

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**Date** 26/02/2019

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**Authors** Lisa Walton, Senior Officer Planning and Development Management

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## **Recommendations**

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1. That the confirmation of the TPO (T01/2018) is approved for the reasons set out in the report and as per the schedule attached at Appendix B.
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## **Background and Relevant History**

1. The relevant planning history for this site includes a refused application in 1997 to convert the building to a shop with store. This application was refused under P/4277 in September 1997. This decision was subsequently appealed and in overturning the Council's decision, the Inspector allowed the conversion of the building, as proposed, but with a specific condition to retain the two Elm trees.
2. In 2015 a tree works application was made to the Council to reduce and re-shape the two elm trees. P/15/100/TWA was approved in December 2015. In 2017 an application was submitted to change the use of the building from a soft play facility (use class D2) to use as a small craft distillery (use class B1). P/17/095/FUL was approved in December 2017.
3. In 2018, during the conversion of the building as approved in 2017 the owners sought to make alterations to the building, including installation of solar panels and removal of the 2 elm trees. During the consideration process it was considered that there was insufficient justification for the tree removal and these were taken out of this application. P/18/045/FUL was approved in August 2018. A further application for tree works was made under P/18/077/TWA. On the basis of the information provided, relating to tree removal to remove future risks, an interim Tree Preservation Order was made on the two Elm Trees (T1 and T2) under T01/2018.

## **Consultations and Representations**

4. As required by the regulations for making TPO all neighbouring properties were written to giving 21 days to make a representation on the TPO. An objection was received from the property owners who set out the reasons for needing to remove the trees, which included a series of photographs showing the cavities within the tree trunks. The main reason for the objection relates to concerns about the safety of the trees with particular reference to the road, overhead cables and underground drains.

## **Primary Legislation**

### **The Town and Country Planning Act 1990**

5. The law on Tree Preservation Orders is contained within Part VIII of the Town and Country Planning Act 1990 as amended in the Town and Country Planning (Tree Preservation) (England) Regulations 2012 which came into force on the 6<sup>th</sup> April 2012. Section 192 of the Planning Act 2008 made further provisions to the 1990 Act which allowed for the transfer of provisions from within existing Tree Preservation Orders to regulations. Part 6 of the Localism Act 2011 amended section 210 of the Town and Country Planning Act 1990 concerning

time limits for proceedings in regard to non-compliance with Tree Preservation Order regulations.

#### **What is a Tree Preservation Order?**

6. A Tree Preservation Order is an order made by a local planning authority in England to protect specific trees, groups of trees or woodlands in the interests of amenity. An Order prohibits the:
  - Cutting down
  - Topping
  - Lopping
  - Uprooting
  - Wilful damage
  - Wilful destructionof trees without the local planning authority's written consent. If consent is given, it can be subject to conditions which have to be followed. In the Secretary of State's view, cutting roots is also a prohibited activity and requires the authority's consent.
  
7. Owners of protected trees must not carry out, or cause or permit the carrying out of, any of the prohibited activities without the written consent of the local authority. As with owners of unprotected trees, they are responsible for maintaining their trees, with no statutory rules setting out how often or to what standard. The local planning authority cannot require maintenance work to be done to a tree just because it is protected. However, the authority can encourage good tree management, particularly when determining applications for consent under a Tree Preservation Order. This will help to maintain and enhance the amenity provided by protected trees.

#### **Assessment**

8. A site visit was made by the Planning Officer in August and again in September 2018. Both visits were unaccompanied. The Planning Officer assessed the suitability of the trees for a TPO using the TEMPO method (Tree Evaluation Method for Preservation Orders), following a visual assessment of the trees amenity value and general condition and appearance. The assessment sheet is attached at Appendix A.
  
9. The site comprises a large semi-detached property with associated outbuildings in a plot that adjoins the highway and an adjacent local shop. To the rear is an attached barn/workshop and further to the west is Ennor Castle, which is a Scheduled Monument. To the east of the property, across the road, is a row of small terraced houses. To the south of the property there is a large detached house, beyond which is an access track to a neighbouring farm.

10. The trees at this site are highly visible to the public realm as they can be seen from the adjacent public highway, which is the main road running through Old Town (A3112). The two trees are both Elm trees (*Ulmus*) which have been subjected to pollarding in recent years. Characteristic of these trees is their ability to re-grow, which the trees have done well in the last 3 years, following the last pollard. The trees are well-shaped and grow relatively close together in a small area, which has been hard-surfaced, leaving each tree with a small area, enclosed by low picket fences.
11. At the time of both site visits, it was noted that the yard area, in which the trees are situated, was being used for material storage for the purpose of the conversion of the associated barn to a gin distillery (in accordance with P/18/045/FUL). The trees had extensive epicormal growth and other plants had taken root within the ground around each tree. There were signs of cavities within the trunks but no other significant signs of ill health or structural defects were noted in the prominent trees. Dutch elm disease has not been introduced to the islands so unlike mainland UK Elm trees, Elm trees on Scilly can grow to be mature trees without suffering from this disease.
12. The tree owner has not provided any specialist tree reports to support his claims of health problems associated with the Elm trees at this site. The onus is on the person wishing to remove the trees to demonstrate they are of a poor condition and not on the LPA to prove that they are not.
13. It is noted that the trees have been subjected to heavy pollarding but have sufficiently regrown, in the 3 years since this took place, to be attractive and well-balanced trees within the public realm/Conservation Area and therefore both trees did score highly enough to make a TPO defensible according to the TEMPO method.
14. The Tree Officer at Exmoor National Park has reviewed the TEMPO assessment and has concurred with the score. He has noted that it is very difficult to know how long trees will live. According to "Trees of Britain and Northern Europe" Mitchell and Wilkinson 2001, English elm can live for up to 300 years. Such longevity would probably be the case for elm trees growing in better conditions than these trees, hence the conservative estimate of 40-100 years left for retention. It was not considered possible to age the trees any more accurately for the same reasons, the restricted growing conditions and the fact that they have been pollarded in the past.
15. The interim TPO has provided the site owner with the opportunity to demonstrate that the trees are unsafe/causing damage which they have yet to do. The presence of the cavities alone are not enough to accept the trees need to be removed and it is considered that details should be provided that shows

the extent of the cavities in terms of size and what percentage of the trunks are decayed. It is also unclear from the representation as to how the pollarding could have caused the decay elsewhere in the tree as suggested in the objection.

## **Conclusion**

16. There are several trees including a significant number growing in and around Ennor Castle scheduled monument but it is the trees at this site that are particularly prominent in the local street scene and highly visible to members of the public. The trees are free from significant structural defects and in good health. With good management, these trees can persist into the future for several decades.
17. The presence of a Tree Preservation Order does not prevent work from taking place to trees for either safety reasons or as part of good tree management. Any future applications for tree works should be supported with qualified assessments to evidence the need to do the work.
18. It is recommended that the Order, attached at Appendix B, is confirmed without modifications.

## **Financial implications**

19. 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. Details of this can be found in the link below.

## **Legal implications**

20. In considering any future application for tree works, 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.
21. Whilst all trees on the islands are protected, in a similar manner to a tree with a Tree Preservation Order (TPO) on, the only legal mechanism to prevent unjustified tree removal is through the making of a formal TPO. So whilst any

tree works on any of the inhabited islands requires notification to the Local Planning Authority, and it is a criminal offence to carry out tree works without going through the formal notification process, an application to carry out works or remove trees with a confirmed TPO on them require the owner to support the work proposed with qualified assessment.

22. The current interim TPO expires on the 11<sup>th</sup> March 2018 after this date the trees will no longer be protected, other than by virtue of being within a Conservation Area.

### Links

**Flowchart for compensation arising out of a decision to refuse consent for tree works:**

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/777645/TPO\\_flowchart\\_4.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/777645/TPO_flowchart_4.pdf)

### Report Approval

<b>Senior Manager</b>	Craig Dryden Senior Manager Infrastructure & Planning	26/02/2019
<b>Financial</b>	[Name, Job Title]	[DATE]
<b>Legal</b>	Stephen P Taylor Deputy Monitoring Officer	26/02/2019

## Appendix A – TEMPO Tree Assessment

### TREE EVALUATION METHOD FOR PRESERVATION ORDERS - TEMPO SURVEY DATA SHEET & DECISION GUIDE

<b>Date:</b>	<b>25<sup>th</sup> September 2018</b>	<b>Surveyor:</b>	<b>Lisa Walton</b>
<b>Tree Details</b>			
<b>Tree Ref (if applicable)</b>	T01/2018	<b>Species:</b>	Elm Trees (x2) <i>Ulmus</i> T1 and T2
<b>Owner</b>	Mr A Miller	<b>Location:</b>	same
	The Distillery		
	Old Town Lane		
	St Mary's		
	Isles of Scilly TR21 0NN		

**Part 1 Amenity Assessment**

<b>a) Condition and suitability for TPO</b>		<b>Score and Notes:</b> Both trees are in fair condition with some cavities noticeable. Lots of epicormic growth. Trees have previously been pollarded. The owner has not provided any evidence to suggest the trees are dead, dying or dangerous. The applicant has stated that the trees have considerable rot throughout with hollow core trunk bases on each tree. Although this is not supported by a qualified arboriculturalist report and whilst some hollow features were observed the tree did not appear to be suffering at the time of visit the site. There is no suggestions that the trees are suffering from Dutch Elm disease.
5) good	<input type="checkbox"/> Highly suitable	
3) Fair/satisfactory	<input checked="" type="checkbox"/> Suitable	
1) Poor	<input type="checkbox"/> Unlikely to be suitable	
0) Dead/Dying/Dangerous*	<input type="checkbox"/> Unsuitable	
* Relates to existing context and is intended to apply to server irremediable defects only		

<b>b) Retention span (in years) &amp; suitability for TPO</b>		<b>Score and Notes:</b> Planning history shows that the trees were on site when the barn was converted. The appeal decision specifically requires the retention of the trees. Elm trees can live over 100 years. The age of the trees is estimated to be around 30-40 years old
5) 100+	<input type="checkbox"/> Highly suitable	
4) 40-100	<input checked="" type="checkbox"/> Very Suitable	
2) 20-40	<input type="checkbox"/> Suitable	
1) 10-20	<input type="checkbox"/> Just suitable	
0) <10	<input type="checkbox"/> Unsuitable	
* Includes trees which are an existing or near future nuisance, including those clearly outgrowing their context, or which are significantly negating the potential of other trees of better quality		

<b>c) Relative public visibility &amp; suitability for TPO</b>		<b>Score and Notes:</b> The two elm trees are considered to be important 'street trees' which are highly visible in the public realm of Old Town.
5) Very large trees with some visibility,	<input type="checkbox"/> Highly suitable	

or prominent large trees		They are small in overall size due to regular maintenance and pollarding works approved in 2015/2016.
4) Large trees, or medium trees clearly visible to the public	<input checked="" type="checkbox"/> Suitable	
3) Medium trees, or large trees with limited view only	<input type="checkbox"/> Suitable	
2) Young, small, or medium/large trees visible only with difficulty	<input type="checkbox"/> Barely suitable	
1) Trees not visible to the public, regardless of size	<input type="checkbox"/> Probably Unsuitable	
<b>Consider realistic potential for future visibility with changed land use</b>		

<b>d) Other factors Trees must have accrued 7 or more points (with no zero score) to qualify</b>		<b>Score and Notes:</b>
5) Principal components of formal arboricultural features, or veteran trees	<input type="checkbox"/>	The elm trees are of a particularly good form and whilst some attention is re The age of the trees is estimated to be around 30-40 years. It is very difficult to know how long trees will live. According to "Trees of Britain and Northern Europe" Mitchell and Wilkinson 2001, English elm can live for up to 300 years. This would obviously be in better conditions that these trees, hence the conservative estimate of 40-100 years left for retention. I don't think that would be able to age the trees for the same reasons, the restricted growing conditions and the fact that they have been pollarded in the past.
4) Tree groups, or principal members of groups important for their cohesion	<input type="checkbox"/>	
3) Trees with identifiable historic, commemorative or habitat importance	<input type="checkbox"/>	
2) Trees of particularly good form, especially if rare or unusual	<input type="checkbox"/>	
1) Trees with none of the above additional redeeming features (inc. those of indifferent form)	<input checked="" type="checkbox"/>	
-1) Trees with poor form or which are generally unsuitable for their location	<input type="checkbox"/>	
<b>Consider realistic potential for future visibility with changed land use</b>		

**Part 2: Expediency Assessment**

<b>Trees must have accrued 10 or more points to qualify</b>		<b>Score and Notes:</b>
5) Immediate threat to tree inc. s.211 Notice	<input checked="" type="checkbox"/>	The owner of the site has sought to remove the trees from the site on the basis of potential future damage to the property, which they grow in close proximity to, potential root damage to drains and due to the outgrown size. This has not been supported by qualified assessment of the tree.
3) Foreseeable threat to tree	<input type="checkbox"/>	
2) Perceived threat to tree	<input type="checkbox"/>	
1) Precautionary only	<input type="checkbox"/>	



**Part 3: Decision guide**

Any 0	<input type="checkbox"/> Do not apply a TPO	<b>Score and Notes:</b> The trees are particularly prominent and hold a significant amount of amenity value. There is no report, other than the applicant's assertions, that there is anything fundamentally wrong with the trees at this site.
1-6	<input type="checkbox"/> Indefensible TPO	
7-11	<input type="checkbox"/> Does not merit TPO	
12-15	<input type="checkbox"/> TPO Defensible	
16+	<input checked="" type="checkbox"/> Definitely merits TPO	

<b>Add Scores for Total</b>	17	<b>Decision:</b> Make the TPO permanent.
<b>Date:</b>	25/09/2018	
<b>Surveyor</b>	L Walton	

## Appendix B TPO T01/2018 Schedule



**IMPORTANT – THIS COMMUNICATION AFFECTS YOUR PROPERTY**

## **COUNCIL OF THE ISLES OF SCILLY**

Town Hall, The Parade, St Mary's TR21 0LW

Telephone: 01720 424455

Email: [planning@scilly.gov.uk](mailto:planning@scilly.gov.uk)

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### **Tree Preservation Order Town and Country Planning Act 1990 TPO T01/18**

**The Council of the Isles of Scilly in exercise of the powers conferred on them by section 198 of the Town and Country Planning Act 1990 make the following Order—**

#### **Citation**

1. This Order may be cited as TPO T01/18.

#### **Interpretation**

- 2.— (1) In this Order “the authority” means the Council of the Isles of Scilly.  
(2) In this Order any reference to a numbered section is a reference to the section so numbered in the Town and Country Planning Act 1990 and any reference to a numbered regulation is a reference to the regulation so numbered in the Town and Country Planning (Tree Preservation)(England) Regulations 2011.

#### **Effect**

- 3.— (1) Subject to article 4, this Order takes effect provisionally on the date on which it is made.  
(2) Without prejudice to subsection (7) of section 198 (power to make tree preservation orders) or subsection (1) of section 200 (tree preservation orders: Forestry Commissioners) and, subject to the exceptions in regulation 14, no person shall—  
(a) cut down, top, lop, uproot, wilfully damage, or wilfully destroy; or  
(b) cause or permit the cutting down, topping, lopping, wilful damage or wilful destruction of, any tree specified in the Schedule to this Order except with the written consent of the authority in accordance with regulations 16 and 17, or of the Secretary of State in accordance with regulation 23, and, where such consent is given subject to conditions, in accordance with those conditions. Application to trees to be planted pursuant to a condition
4. In relation to any tree identified in the first column of the Schedule by the letter “C”, being a tree to be planted pursuant to a condition imposed under paragraph (a) of section 197 (planning permission to include appropriate provision for preservation and planting of trees), this Order takes effect as from the time when the tree is planted.

**Dated this 10<sup>th</sup> day of September 2018**

Signed:



**Craig Dryden, Senior Manager: Infrastructure and Planning**

**CONFIRMATION OF ORDER**

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This Order was confirmed by the Council of the Isles of Scilly without modification on the [ ] day of [insert month and year].

**Signed on behalf of the Council of the Isles of Scilly**

Signed.....

**Senior Manager: Infrastructure and Planning/Chief Executive Officer  
(Delete as Appropriate)**

OR

**DECISION NOT TO CONFIRM ORDER**

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A decision not to confirm this Order was taken by the Council of the Isles of Scilly on the [ ] day of [insert month and year].

**Signed on behalf of the Council of the Isles of Scilly**

Signed.....

**Senior Manager: Infrastructure and Planning/Chief Executive Officer  
(Delete as Appropriate)**

## SCHEDULE Specification of trees

Trees specified individually  
(Encircled in black on the map)

Reference on map	Description	Situation
T1 Elm ( <i>Ulmus</i> )	English Elm	The Distillery, Old Town Lane Old Town, St Mary's, Isles Of Scilly TR21 0NN
T2 Elm ( <i>Ulmus</i> )	English Elm	The Distillery, Old Town Lane Old Town, St Mary's, Isles Of Scilly TR21 0NN

**TPO T01/18 x2 Elm Trees at Old Town (The Distillery) St Mary's**



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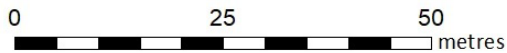
Date: 10/09/2018

Town Hall, The Parade,  
St Mary's, Isles of Scilly, TR21 0LW



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Council of the  
ISLES OF SCILLY

Do not Scale from this image

## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations, which apply in relation to England only, substantially revoke and replace the Town and Country Planning (Trees) Regulations 1999, to the extent to which they apply to England. They also revoke the Town and Country Planning (Trees) (Amendment) (England) Regulations 2008 and the Town and Country Planning (Trees) (Amendment No. 2) (England) Regulations 2008.

Part 2 prescribes the form of tree preservation orders and the procedure for their making, provisional effect, confirmation, variation and revocation. The prescribed form is set out in the Schedule to the Regulations.

Part 3 of the Regulations sets out prohibited activities in relation to a tree protected by an order and exceptions. Under regulation 13 a tree protected by a tree preservation order may not be cut down, topped, lopped, uprooted or wilfully damaged or destroyed without the consent of the local planning authority, unless an exception applies. These exceptions are set out in sections 198(7) and 200(1) of the Town and Country Planning Act 1990, and in regulation 14 of the Regulations.

Section 198(7) provides exceptions relevant to section 39(2) of the Housing and Planning Act 1986 (c.63) (saving for effect of section 2(4) of the Opencast Coal Act 1958 (c. 69) on land affected by a tree preservation order despite its repeal) and section 15 of the Forestry Act 1967 (c.10) (licences under that Act to fell trees comprised in a tree preservation order).

Section 2100(1) provides that a tree preservation order does not have effect in respect of anything done by or on behalf of Forestry Commissioners on land placed at their disposal in pursuance of the Forestry Act 1967 or otherwise under their management or supervision or anything done by or on behalf of any other person under a plan of works approved by the Forestry Commissioners under a forestry dedication covenant (as defined in section 5 of the Forestry Act 1967) or under conditions of a grant or loan made under section 1 of the Forestry Act 1979 (c. 21).

Regulation 14 contains exceptions to the requirement for consent and regulation 15 contains exceptions for trees in conservation areas.

Part 4 of the Regulations prescribes the procedure for applications for consent under tree preservation orders.

Part 5 prescribes the procedure for appeals and for their determination. Regulation 19 grants a right of appeal in respect of a refusal to grant consent, a grant of consent subject to conditions or a failure to determine an application for consent within the prescribed time period.

In Part 6, regulation 24 provides for compensation claims, subject to exceptions, to be made where loss or damage has been incurred as a consequence of a refusal to grant consent, a grant of consent subject to conditions or a refusal of approval required under a condition.

Part 7 contains miscellaneous provisions. Regulation 25 provides that the prescribed time for the purposes of sections 206(1)(b) (replacement trees) and 213(1)(b) (enforcement of controls as respects trees in conservation areas) is whenever the cutting down or uprooting of a tree is authorised only by virtue of regulations 14(1)(a)(i) or 14(1)(c) (dead or dangerous trees).

Regulation 26 revokes the Town and Country Planning (Trees) Regulations 1999, the Town and Country Planning (Trees) (Amendment) (England) Regulations 2008 and the Town and Country Planning (Trees) (Amendment No.2) (England) Regulations 2008, subject to transitional, transitory and saving provisions in respect of certain classes of order. This regulation also saves regulation 17 of the Town and Country Planning (Trees) Regulations 1999 (amendment to the Town and Country Planning General Regulations 1992).

Under section 193 of the Planning Act 2008 (c. 29), all tree preservation orders made prior to the date on which these Regulations come into force take effect with the omission of all of their provisions other than any that identify the order or identify the trees, groups of trees or woodlands to which the order applies. A full impact assessment of the effect that this instrument will have on the costs of business, charities and the voluntary sector has been prepared in relation to these Regulations. The assessment has been placed in the Library of each House of Parliament and is published with the Explanatory Memorandum alongside the instrument on [www.legislation.gov.uk](http://www.legislation.gov.uk)). The assessment may also be accessed at [www.communities.gsi.gov.uk](http://www.communities.gsi.gov.uk).

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