

## 5.1 - TPO 3 of 2021

**PROPOSAL:** TPO 3 of 2021 was served in response to the auctioning of lots at Kemsing Nature Reserve Leisure Plots. Concern has been raised that multiple ownership within a large area would alter the overall amenity benefits that the site currently offers.

**LOCATION:** Situated to the north of Pilgrims Way, Kemsing. Between Eastlea to the west and Chalkpit Cottage to the east.

**WARD(S):** Kemsing.

### **ITEM FOR DECISION**

TPO 3 of 2021 has been served to avoid numerous differing types of management of a woodland area (wood lotting)

**RECOMMENDATION:** That TPO 3 of 2021 is CONFIRMED without amendment.

### **Description of Site**

- 1 The woodland area as described above consists of mixed deciduous woodland with underlying scrub, with well-trodden pathways running in and around the site.

### **Constraints**

- 2 The following constraints apply
  - Kent Downs AONB;
  - TPO 03 of 2021;
  - Local Wildlife Site (ref; SE12);
  - Metropolitan Green Belt.

### **Amenity Value and Visibility of the woodland.**

- 3 The woodland amenity is measured in its ecological and visual benefits. The site is readily accessible with multiple well-trodden footpaths throughout as well as Public Right of Way SR77 within it to the east. The amenity is not generally to do with a singular tree but the group/woodland as a whole. The site now has in excess of 70 registered owners. As the sites amenity is within its whole, rather than individual specimens, the differing management techniques of all the owners could change/formalise the area with the resultant reduction/removal of any amenity benefits that currently exist. It

is clear from a brief walk through the site that bird life is abundant throughout, as are walkers using the location for amenity benefits.

## **Representations**

- 4 Two objections to the order have been received from two separate plot holders.
- 5 Mr K Constantinou has objected to the serving of the TPO via his solicitors Bowers & Jessup. They have stated that the land has no trees and that the order protects scrub and prevent Mr Constantinou from ever making use of his land in the future.
- 6 They go onto state that the order makes the land completely valueless and that they believe that their client is being victimised by the Council who are proposing to take away the value of his land without any form of compensation. That would appear to amount to expropriation and therefore a breach of our clients right to lawful enjoyment of his property, both under common law and under the Human Rights Act.
- 7 Memnitsa McWilliams has objected to the order on the following grounds.
- 8 The proposed order will prejudice our rights to use our land as outlined in the land registry title deeds as agricultural land, thereby materially penalising ourselves as land owners.
- 9 The LPA has not provided explanation, justification or evidence that the land provides a reasonable degree of public benefit, nor that a TPO is required in this area to protect the local environment and its enjoyment by the general public.

## **Appraisal.**

### **Consideration of Objections.**

- 10 TPO 3 of 2021 was served to ensure that the woodland as a whole was not dissected into plots and managed individually. An Article four was served on the site in the 1970's. This does prevent the erection of fencing, sheds etc. TPO 3 of 2021 now prevents unjustified felling and/or clearance of any of the plots. Any proposal can still be considered via an application, where the importance of the trees, now protected, will be taken into account.
- 11 The previously served Article 4, already restricts actions that can be taken on the plots which has been in place for many decades. The only options therefore available to the land owners without planning consent for their plots would be tree works. Any such proposal would now require a formal application, which would be assessed in the normal way and provide this local planning authority with an opportunity to support or disagree with the proposals based upon the effects on the amenity of the site.
- 12 Section 6 of the Human Rights Act 1998 imposes a duty on public authorities, including Local Authorities, not to act in any way which is incompatible with the European Convention on Human Rights. Article 1 of the First Protocol to the Convention provides that every person is entitled to

the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and the general principle of International Law. Article 1 permits a Member State to enforce such laws, as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.

- 13 The service of a Tree Preservation Order could be interpreted as an interference with the rights of a property owner to use his property as he sees fit. Such interference must be 'proportionate', which means that it must not be in excess of what is needed to prevent harm to the general interest. The Government considers that there is a genuine wider public interest in protecting the loss or deterioration of irreplaceable habitats and protecting the quality and character of the environment.

#### **Expediency of preserving the mixed deciduous woodland**

- 14 The woodland has amenity benefits as a whole with roosting and nesting sites for birds within it, as well as the benefits to the users of the site as they walk throughout and around its many tracks and pathways. The serving of this order would retain this woodland with control on the extent of any future pruning/felling works to it.

#### **Conclusion**

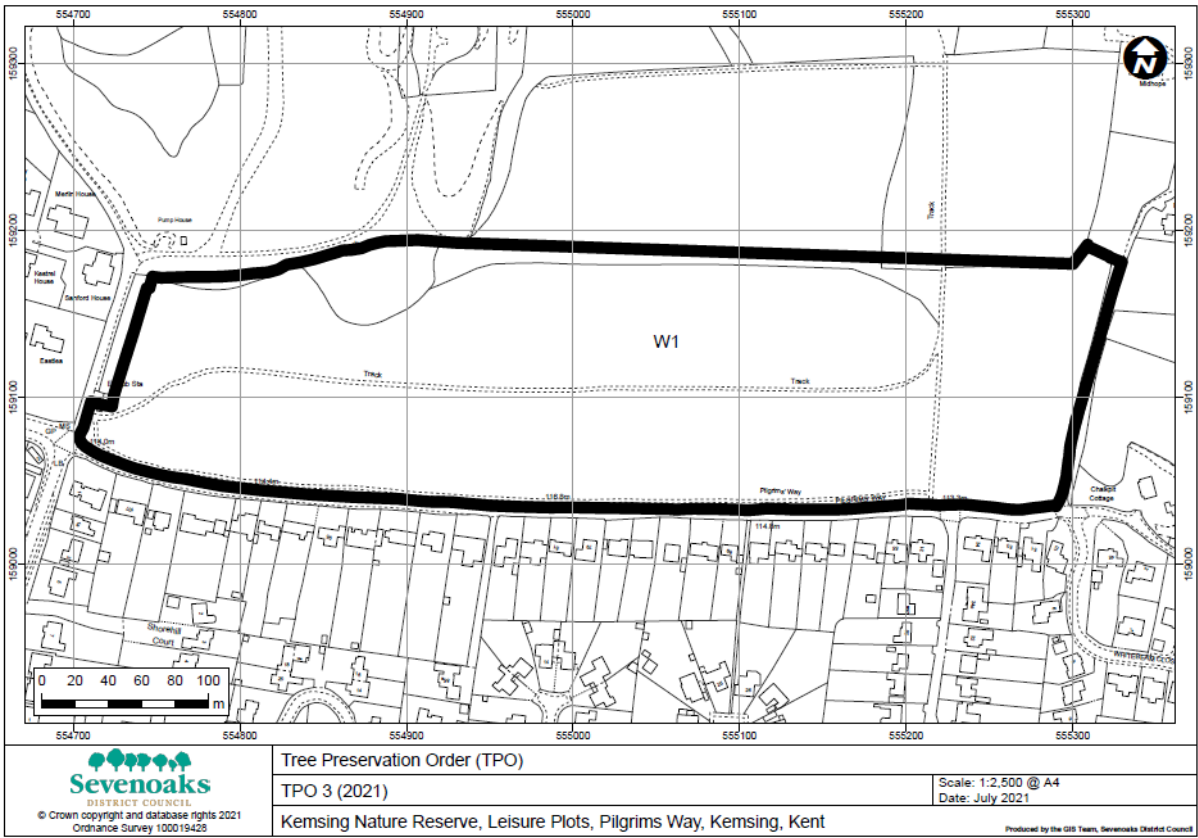
- 15 It is therefore my recommendation that TPO 3 of 2021 be CONFIRMED without amendment.

TPO plan and Schedule 1 attached as (Appendix 1).

Contact Officer

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**Richard Morris**  
**Chief Planning Officer**



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Ordnance Survey 100019428

Tree Preservation Order (TPO)

TPO 3 (2021)

Kemsing Nature Reserve, Leisure Plots, Pilgrims Way, Kemsing, Kent

Scale: 1:2,500 @ A4  
Date: July 2021

Produced by the GIS Team, Sevenoaks District Council

**SCHEDULE 1**

**SPECIFICATION OF TREES**

**Trees specified individually**  
(encircled in black on the map)

<i>Reference on Map</i>	<i>Description</i>	<i>Situation*</i>
	None	

**Trees specified by reference to an area**  
(Within a dotted black line on the map)

<i>Reference on Map</i>	<i>Description</i>	<i>Situation*</i>
	None	

**Groups of trees**  
(Within a broken black line on the map)

<i>Reference on Map</i>	<i>Description</i>	<i>Situation*</i>
	None	

**Woodlands**  
(Within a continuous black line on the map)

<i>Reference on Map</i>	<i>Description</i>	<i>Situation*</i>
W1	Mixed deciduous woodland with underlying scrub	Located between Eastlea to the west and Chalknit Cottage to the east

\* complete if necessary to specify more precisely the position of the trees.