

# North York Moors National Park Authority Planning Committee

13 December 2018

## Tree Preservation Order 2018/1 – Cedar Lodge, Egton Lane, Egton

1. <b>Purpose of the Report</b>
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1.1 To seek Members' approval to confirm Tree Preservation Order 2018/1.
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## 2. Background

2.1 A Tree Preservation Order (TPO) was made on 3 August 2018 relating to an area of trees situated on land at Cedar Lodge, Egton Lane, Egton. This order took provisional effect from the date it was made and requires to be confirmed within 6 months. The protected trees are specified as an area therefore the Authority can take either of the following actions;

- Not confirm and allow protection of trees to lapse;
- Confirm with a modification to specify as individual trees as shown on the plan in **Appendix 1**;
- Confirm with a modification to specify as individual or groups of trees as directed by members.

2.2 The trees are located to the west of Egton village on an area of land immediately to the south of Egton Lane between the buildings at Cedar Lodge and The Nurseries. It was historically part of the Egton Estate tree nursery. The trees are mature and can be seen from the lane, as well as from more distant views.

2.3 The decision to serve a provisional order was taken after the landowner submitted a planning application to develop the site in May 2018. The application proposed to remove roadside trees and coppice others further to the south. This proposed work coupled with potential impacts of construction and associated activity on other trees constituted a clear threat to the trees at this location.

2.4 The area had previously been inspected in September 2016 by an arboricultural consultant contracted by the Authority in response to a consultation from arboricultural contractors working for a utility company who were considering felling roadside trees. His report established that the trees here, along with those on adjacent property, provided significant amenity benefit.

2.5 The Woodland Officer confirmed with the Planning Officer assigned to the planning application that there had not been any significant removal of trees in the period since September 2016 and an area TPO was authorised under delegated authority by Andy Wilson, Chief Executive on the 31 July 2018.

### 3. Site Details

- 3.1 The area covered by the provisional order contains several beech, sycamore, lime and coniferous species. There is also an outgrown beech hedge along parts of two boundaries. The Woodland Officer carried out an inspection of the trees on the 21 November 2018 to ascertain their current condition. On this inspection it was determined that eleven individual trees were of significant amenity value. Two of these had suffered historical damage and were considered unsuitable for long term retention, and therefore nine trees were considered appropriate for continued protection by a TPO. These are a beech (T1), four sycamores (T2, T4, T6 and T7), two limes (T3 and T5) and two western red cedars (T8 and T9).
- 3.2 The Tree Evaluation Method for Preservation Orders (TEMPO) had been followed by the arboricultural consultant and a survey data sheet completed on the 2 September 2016 with a score of 18 being generated where a score of 16 or more indicates that a site definitely merits a TPO. The TEMPO assessment was reviewed by the Woodland Officer on the 21 November 2018 and a revised score of 17 given. Photographs of the trees from the highway are reproduced in **Appendix 2**.

### 4. Objections and Representations

- 4.1 The public have 28 days to comment on new Orders, which are publicised in accordance with Authority procedures and the TPO regulations. Objections and representations must be taken into account by planning authorities before they decide whether or not to confirm an order, or whether or not to modify it upon confirmation.
- 4.2 There has been one response to the Order which has been submitted by the landowner and is reproduced at **Appendix 3**. Specific objections or concerns relevant to the order are described below along with a summary of officers' responses.
1. The landowner raised the question as to why the TPO had been served when in 2016 the Authority had agreed that trees in the area could be removed. The Woodland Officer responded by explaining that the 2016 consultation only related to trees immediately adjacent to the highway and that the loss of these trees would not have had a major impact on amenity.
  2. The landowner asked why it has not been deemed necessary to place TPO's on adjacent trees on neighbouring land. The Woodland Officer has responded by explaining that it has not been expedient to protect adjacent trees as they are not subject to a foreseeable threat.
  3. The landowner asked for an explanation of how the Authority has complied with the elements of the TPO legislation, specifically those relating to assessing public amenity. The landowner also had a concern that the TPO had been used specifically to prevent planning permission from being obtained. The Woodland Officer responded with the following statements: *"The trees in question form part of a group that had been assessed as worthy of preservation prior to submission of any planning application for the site. This was supported by a simple amenity test called the **Tree Evaluation Method for Preservation Orders**."* and *"In respect of the final point; the submission of a planning application has no influence on the assessment of amenity value for the trees. It is only used to identify threats to trees and therefore the expediency of placing them under an order."*

## 5. **Comment**

- 5.1 The main grounds for objection to the Order have been considered and officers are of the opinion that landowners' concerns have been adequately addressed in a written response and verbally at a site meeting with the Woodland Officer.
- 5.2 Since the serving of the Order the planning application for the site has been refused. The proposed tree removals, coppicing and lack of arboricultural consideration for retained trees were given as one of three reasons for refusal in the decision notice. This has potentially reduced the threat to the trees but we have to consider that future applications to develop the site, not just for a new dwelling, may be forthcoming, and that trees might be removed prior to a submission if they are not legally protected.
- 5.3 The officer recommendation is that the Order is confirmed with a modification to protect the 9 individual trees described above and mapped in Appendix 1. Protection by the Order should ensure that future tree work is carried out to a high standard and if the trees do need to be felled at a future date replacements can be secured via a condition.

## 6. **Financial and Staffing Implications**

- 6.1 None.

## 7. **Contribution to National Park Management Plan**

- 7.1 The relevant Management Plan policies are:
- E40. Individual and groups of trees that are of amenity and conservation value will be protected and new tree planting will be encouraged, where appropriate.

## 8. **Legal Implications**

- 8.1 An authority cannot confirm an Order unless they have first considered any duly made objections or other representations.
- 8.2 The legislation provides no right of appeal to the Secretary of State against an authority either making or confirming an Order.
- 8.3 The validity of an Order cannot be challenged in any legal proceedings except by way of application to the High Court on a point of law.

## 9. **Recommendation**

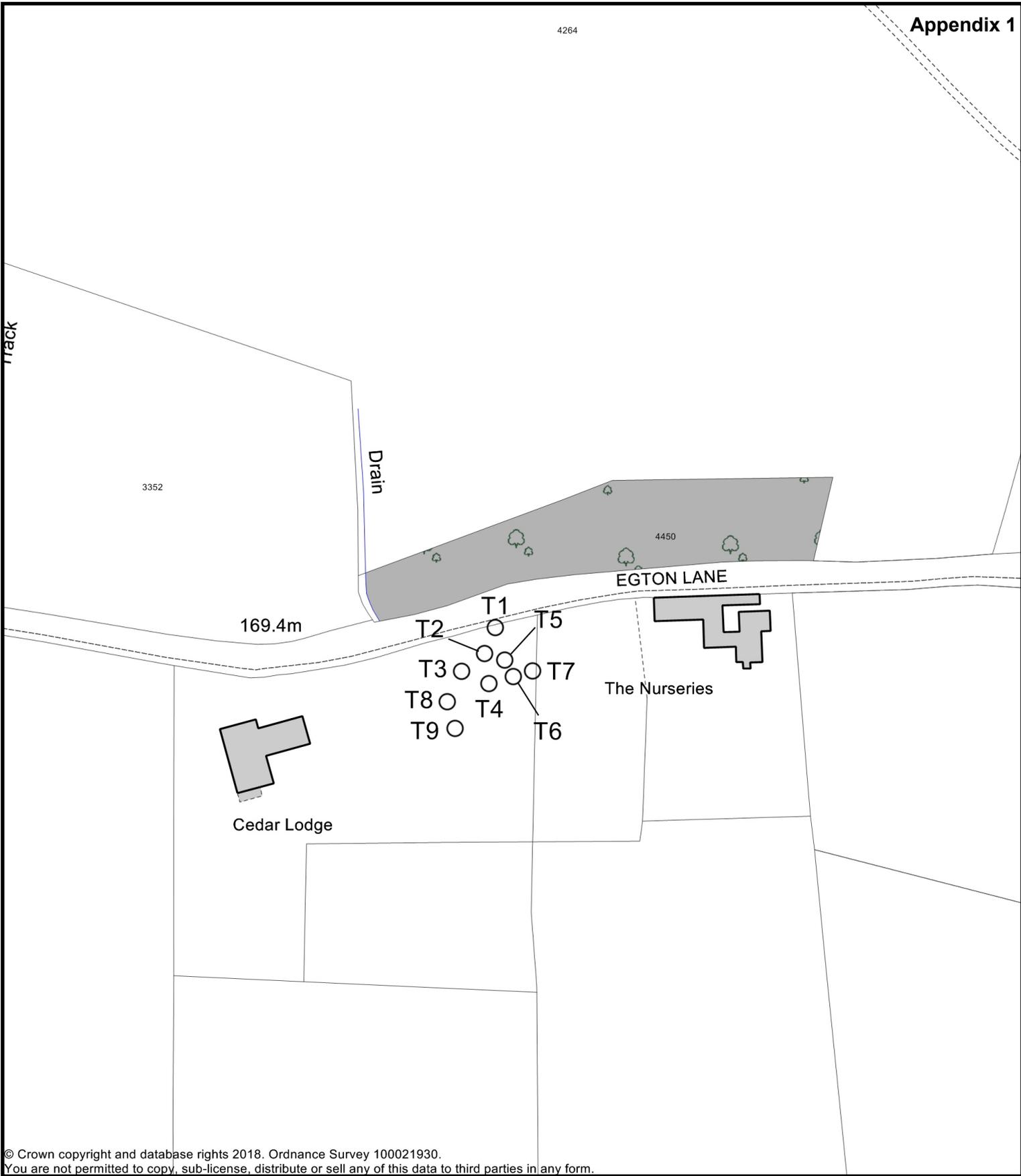
- 9.1 That Tree Preservation Order 2018/1 – Cedar Lodge, Egton is confirmed with modifications to protect nine individual trees as specified.

Contact Officer

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**Background papers to this Report**  
None

**File ref**



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**North York Moors  
 National Park Authority**

TREE PRESERVATION  
 ORDER.  
 No. **2018/1**

Chief Executive  
 (National Park Officer)

Scale 1:1,500



Ref: Cedar Lodge TPO

NYM201/017/FL

Mr C M France

Director of Planning

NYMNPA

Dear Sir

I am writing to you with regards to a tree preservation order 2018/1 which has been placed on the trees on a piece of land at Cedar Lodge, Egton. Please can you supply all details as to why this order was imposed when in 2016, NYMNP agreed that trees within the area could be removed, essentially those adjacent to the road for safety reasons. The said trees are now two years older and are certainly no safer than when inspected in 2016.

Also, please can you supply copies of all correspondence exchanged between Mark Antcliffe, The occupants of The Nurseries, Egton Lane and Cedar Lodge, Egton Lane in connection with the tree survey of 2016.

Further, please clarify why a TPO has been placed on hedges which are on the East and South sides of the outlined site and why it has not been deemed necessary to place TPOs on any other trees within the surrounding area.

As I understand it under the relevant legislation the Authority only has power to make a TPO if it appears to them to be:-

'expedient in the interests of amenity to make provision for the preservation of trees or woodlands in their area'.

This in so far as I am aware is interpreted as meaning:-

"That a TPO should only be made if the removal (sic of the trees) would have a significant negative impact on the local environment and its enjoyment by the public and it needs to be shown that protection would bring a reasonable degree of public benefit in the present or in the future."

This being the case, I would be most grateful if you would provide your detailed explanation as to specifically how these elements of the legislation have been both complied with and then determined as being satisfied by you?

I can't help thinking, given the facts of this matter, that this TPO has been made outside of the legislation as a "back door means" of preventing my obtaining planning permission on my land. Clearly the Authority has no power to do this.

In the circumstances I now await your detailed reply.



P.P. DAVID H MILLER