

5

REPORT TO:	DEVELOPMENT CONTROL COMMITTEE	AGENDA ITEM:
DATE OF MEETING:	22 JUNE 2004	CATEGORY: DELEGATED
REPORT FROM:	DEPUTY CHIEF EXECUTIVE	OPEN
MEMBERS' CONTACT POINT:	ALISON BRIGGS	DOC:
SUBJECT:	TREE PRESERVATION ORDER 215 – LAND OFF MIDWAY ROAD AND HAMILTON DRIVE, SWADLINCOTE	REF:
WARD AFFECTED:	SWADLINCOTE	TERMS OF REFERENCE: DC01

1.0 Recommendations

- 1.1 That this Tree Preservation Order be confirmed with a modification to the boundary to exclude an area of garden land which contains no significant trees other than an oak. The oak could be protected under an Individual Tree Preservation Order if necessary in the future. A woodland order is not normally the appropriate tool for protecting garden trees.

2.0 Purpose of Report

- 2.1 To consider confirmation of this Tree Preservation Order as modified.

3.0 Detail

- 3.1 This Tree Preservation Order was made on 31st December 2003 in respect of a woodland between Midway Road and Hamilton Drive, Swadlincote as indicated on plan 1 attached at Annex 'A'. It is now proposed that the order is confirmed with an amendment to the boundary excluding the area hatched on plan 2 attached at Annex 'A'.

The Order was made for the following reasons:

'The woodland is an important amenity feature, which forms a wooded boundary between residential development and an area of land, designated as important open land within Swadlincote. The woodland is clearly visible from Midway Road, Hamilton Drive and footpaths which cross the open land. A written enquiry has been received about developing the area and in view of the amenity value of the woodland, South Derbyshire District Council considers it expedient that this Order be made.'

- 3.2 Five letters in support of the TPO have been received and the letters request that the order is confirmed so that the woodland can be protected indefinitely. Four letters of objection have been received. Three of the letters received are from the Agent who made the original enquiry about developing the land. Their objection is the fact that some of the trees are not of sufficient size or quality to be preserved and therefore that areas of woodland have been covered which they consider it unnecessary to protect.

A further letter has been received from the occupier of No 4 Midway Road objecting on the grounds that part of their garden has been included within the order and that this could affect any future development potential or sale. They state that there is only one oak tree worthy of protection on their property, which they do not have any intention of damaging or removing.

3.3 In answer to the comments made officers have the following comments:

- DETR guidance entitled 'Tree Preservation Orders – A Guide to the Law and Good Practice' advises that the Act does not limit the application of TPOs to trees of a minimum size. Trees that grow naturally or are planted within a woodland area are also protected by the TPO, the purpose of a woodland order is to protect a woodland unit as a whole and the unit depends on regeneration or new planting. Therefore although some trees are currently very small in size they will grow and act to regenerate the woodland.
- It is proposed that the order be confirmed with the amendment that the garden area referred to is excluded from the order. The garden land is only a small area of the woodland area and does not contain any trees worthy of retention other than the oak which is under no threat and which if necessary could be covered by an individual order in the future.

4.0 Planning Assessment

- 4.1 It is expedient in the interests of amenity to make this wood the subject of a Tree Preservation Order. The woodland is highly visible from Midway Road, Hamilton Drive and footpaths/ public open space adjacent to the Swadlincote Woodlands site. The woodland forms an attractive boundary between the rear of houses fronting Hamilton Drive and the footpaths and open space to the north and west of the Swadlincote Woodlands site.
- 4.2 Following a letter received from the occupier of No 4 Midway Road and a further site visit it is considered that the order should be confirmed with the modification to the boundary of the Order detailed above.
- 4.3 The Authority would not resist the proper management of the wood and confirming the TPO would not prevent this work from being carried out subject to an application for such works being made and approved.

5.0 Conclusions

- 5.1 Proper management is considered to be the appropriate solution for this small wood which it is expedient in the interests of amenity to preserve.

6.0 Financial Implications

- 6.1 None.

7.0 Corporate Implications

- 7.1 None

8.0 Community Implications

- 8.1 None

9.0 Background Implications

- 9.1 31 December 2003 Tree Preservation Order
- 9.2 16, 28 January and 8 March letter from Agent
- 9.3 22 April 2004 letter from objector
- 9.4 13, 25 and 29 May letters of support from local residents.

