
REPORT TO:	PLANNING COMMITTEE	AGENDA ITEM: 5
DATE OF MEETING:	22 January 2012	CATEGORY: DELEGATED
REPORT FROM:	DIRECTOR OF OPERATIONS	OPEN
MEMBERS' CONTACT POINT:	Kim Doran-Parkes (ext. 5982)	DOC:
SUBJECT:	TREE PRESERVATION ORDER 367	REF:
WARD AFFECTED:	CHURCH GRESLEY	TERMS OF REFERENCE: PL01

1.0 Recommendations

1.1 That this Tree Preservation Order be confirmed.

2.0 Purpose of Report

2.1 To consider confirmation of this Tree Preservation Order (TPO).

3.0 Detail

3.1 This provisional Tree Preservation Order was made on 18 October 2012 in respect of a woodland of numerous trees of mainly Ash and Oak species on land at the junction of Cadley Hill Road and Swadlincote Lane, Church Gresley.

3.2 The TPO was made at the request of the Area Planning Officer following consultation with the Tree Officer following the receipt of a preliminary enquiry to develop the site of The Woodlands, Cadley Hill Road. The trees are generally in good condition and seen to have a high degree of amenity value due to their prominent location bounding a main junction. The trees contribute substantially to the character of the street scene.

3.3 An objection to the proposed Order has been received on behalf of one of the land owners and is summarised as follows:-

- a. The woodland designation is inappropriate as the guide to Tree Preservation Orders states that a Woodland Order is unlikely to be appropriate in a garden. There are trees with individual merit that could be protected but that could no way be considered as woodland.
- b. It is not good practice to include trees that are dead and dangerous. A comprehensive tree condition survey has recently been undertaken which has

highlighted a number of trees that have significantly physiological and structural defects that should be removed on health and safety grounds. The objector was advised that a full assessment of the trees was made by the LPA prior to the TPO being made. Section 3.7 of the 'Blue Book' makes it clear that a LPA can make a TPO without entering the land but should make a considered judgement before it is confirmed. The objector confirms their client's willingness to meet with the LPA.

- c. A TPO is not an appropriate protection measure for trees that are under sound arboricultural management. Section 3.5 of the 'Blue Book' states that 'it is unlikely to be expedient to make a TPO in respect of trees which are under sound arboricultural management'. It is clear that the land owners have a good understanding of the importance of the trees within their own immediate environment as they have investigated planting to screen industrial and residential developments that are in close proximity.

The TPO designation now requires the owners to apply to the LPA to carry out routine maintenance. This is seen as a waste of resources for both parties as there is no threat of removal.

- d. The Order is contrary to government advice. The Blue Book states that the Council has a duty to protect trees through TPO's but that this mechanism should not be used to prevent development.

The objector believes that the TPO was imposed due to preliminary enquiries for a small portion of the site being submitted to the LPA. This has sterilised the area now contained within the TPO outline, which is the incorrect use of a TPO in order for the Council to gain control of the site.

- e. The reasons for the order are not clearly explained. The LPA has not stated how it assessed that the trees are 'prominent and provide a high level of visual amenity within the urban area'. Paragraph 3.3 of the Blue Book states that the LPA 'should be able to explain to landowners why their trees or woodlands have been protected by a TPO'.

LPA's are advised to develop ways of assessing amenity value of trees in a structured and consistent way, taking into account the following criteria: 1) Visibility 2) Individual Impact 3) Wider Impact and 4) Expediency.

The vast majority of the trees within the site are well beyond the gaze of the public therefore it is the objector's opinion that the public do not benefit from them.

3.4 In answer to the comments made, officers have the following responses:-

- a. The area within the TPO outline is not what is considered as a standard garden by ways of its large plot size and the large number of trees that are present. Therefore the 'Blue Book' statement that '*the use of the woodland classification is unlikely to be appropriate in gardens*', is not useful in this case. The individual merits of the site result in a woodland order being appropriate in this circumstance.

- b. A detailed survey of the site was not completed, as this was not necessary prior to making the TPO. Any dead or dangerous trees are exempt from requiring the LPA's prior approval to carry out suitable works to said tree(s).

Relevant officers did make a considered judgment on the value of the trees prior to drafting the TPO and would encourage a meeting with the site owner prior to the submission of any future formal planning application for development of the site.

- c. The sound arboricultural management of trees is a factor of consideration when deciding whether to make a TPO. This does not outweigh the fact that the trees are under potential threat from a proposed development. It is a contradiction for the objector to state that there is sound arboricultural management of the site and that there are many dead and dangerous trees present.
- d. The LPA has considered the TPO under the terms of the 'Blue Book' and is fully aware of the implications, which are therefore considered necessary. There are certain works that are exempt from requiring the LPA's prior approval such as dead wood removal commonly carried out as general maintenance.

The making of the TPO was not proposed to sterilize the land from development. It has been done to protect the large area of trees that were under threat from potential harm due to the receipt of the preliminary enquiry. The TPO allows for the protection of the trees within the site in order that the most suitable options for the site can be discussed without the threat of losing trees worthy of protection. This also allows the Council time to do a more thorough survey of the trees on site.

- e. The reason for the Order was made clear by stating that the trees have high amenity value due to their prominent location and that it is considered expedient to make the order as a preliminary enquiry that may threaten the retention of the trees had been received by the LPA.

The Council does have methods of assessing the factors for consideration prior to TPO being made that were put in place before deciding to make this Order. The LPA is not required to provide this method of assessment on the TPO Order.

There are views through parts of the development. The Woodlands combined overall appearance contributes significantly to the appearance of the street scene.

4.0 Planning Assessment

- 4.1 It is expedient in the interests of amenity to make the trees the subject of a tree preservation order.

5.0 Conclusions

- 5.1 It is expedient in the interests of amenity to preserve.

6.0 Financial Implications

6.1 None.

7.0 Corporate Implications

7.1 Protecting visually important trees contributes towards the Corporate Plan theme of Sustainable Development.

8.0 Community Implications

8.1 Trees that are protected for their good visual amenity value enhance the environment and character of an area and therefore are of community benefit for existing and future residents helping to achieve the vision for the Vibrant Communities theme of the Sustainable Community Strategy.

9.0 Background Information

9.1 18 Oct 2012 Tree Preservation Order

9.2 3 Dec 2012 – Objection Letter from Fisher German