

REPORT TO:	PLANNING COMMITTEE	AGENDA ITEM: 5
DATE OF MEETING:	9th AUGUST 2016	CATEGORY: DELEGATED
REPORT FROM:	DIRECTOR OF COMMUNITY AND PLANNING SERVICES	OPEN
MEMBERS' CONTACT POINT:	RICHARD RODGERS (01283) 595744 richard.rodgers@south-derbys.gov.uk	DOC:
SUBJECT:	PROPOSED TREE PRESERVATION ORDER 426 AT TREE TOPS, FINDERN LANE, BURNASTON	REF:
WARD(S) AFFECTED:	ETWALL	TERMS OF REFERENCE:

1.0 Recommendations

- 1.1 That this Tree Preservation Order (TPO) be confirmed subject to a modification relating to the amended position of T6.

2.0 Purpose of Report

- 2.1 To consider confirmation of this TPO.

3.0 Detail

- 3.1 This TPO was made on 1 March 2016 in respect of a number of trees in the front and side garden area of Tree Tops, Findern Lane, Burnaston. The protected trees are made up of 3 groups (those groups including a varied number of trees) and 9 individuals. The overall tree cover in this location is made up of a mix of broadleaf and evergreen species.
- 3.2 The site had been the subject of a pre-application enquiry for redevelopment which put the retention of the trees in doubt.
- 3.3 The trees are considered to significantly contribute to character of this edge of village situation being highly visible both from the immediate area and from a distance aiding the transition from village edge to countryside.
- 3.4 Two separate comments have been received relating to the proposed Order one from the current owners of the property and one from the potential purchaser and are summarised as:

Current Owners

- The timing of the Order is giving us cause for concern as the sale of the property has not yet been completed. We are worried the Order may affect the sale;

- If the purchaser pulls out of the sale, due to the TPO, we may incur more costs;
- In respect of the actual trees, it is not clear which trees (more those in Group 2) are protected – for example: there are more than 3 Cypresses in G2 so it is not clear which 3 are protected;
- We have concerns the Cypress trees will become very tall blocking light and limiting water to the neighbouring trees and hedges. They could additionally cause a lot of damage if they are blown over due to the elevated position of Tree Tops and the site does suffer more from high winds;
- We are surprised that TPO's were put on any of the Cypresses, as they are a non-native species and are not even an attractive tree, if anything they are seen as a nuisance particularly for neighbours as they block views and take moisture out of the soil;
- The Cherry Tree (in G2) does not belong to Tree Tops;
- T6 is not accurately shown on the plan;

Prospective purchaser

- On previous contact with the Authority (and as part of the purchase of the property) I was told there were no existing Tree Preservation Orders in place on the land;
- The land area in question has been used as a residential plot since the 1950's during which time, no TPO was ever placed;
- The placing of this Order may put the sale of the property in doubt and could result in the loss of a 5% deposit;

3.5 In answer to the comments made officers have the following response:

- It is not the intention to deter prospective purchasers but to shape potential future development to take account of what is a significant visual asset of the site and a constraint that should be accommodated. It is without doubt that the trees add to the attractiveness/appeal of the site;
- The Council provided pre-application advice in respect of redevelopment of the site and the preferred retention of the trees was mentioned as their retention was initially prejudiced. Advice was given that new development should be designed so as to avoid impacting on the trees. The placing of the Order reiterates the importance of the trees to the locality and means that the trees are fully protected from harm that could result from any on site building works. The TPO will result in any redevelopment having to respect the trees and having to be designed in such a way so as to avoid adversely affecting them;
- If there is uncertainty over which trees are protected in the groups, the Council can advise at short notice;
- Trees were protected because of their significant, positive contribution to the visual amenity of the area and not their particular origin. The Cypress trees offer all year round amenity and contribute to the groups, providing some

shelter/companionship to the broadleaf ones adjacent. In terms of impact on neighbours, by virtue of separation, any significant or harmful blocking of light or views is not unreasonable.

- Should any tree become unstable or part of a tree be deemed as imminently dangerous, law allows that they are made 'safe' irrespective of its protected status. Again the Council can advise in that capacity;
- Trees will fail at times especially those of a particular age. The trees here appear to be in good health at present. Trees felt to be in decline have not been included;
- The position of T6 has subsequently been amended. The cherry (G2 irrespective of ownership is still covered by the Order;
- Protecting trees of value accords with the Corporate Plan theme of Sustainable Development having environmental/ecological/wildlife benefits.

4.0 Planning Assessment

- 4.1 It is expedient in the interests of amenity to make the trees the subject of a TPO (with modification to take account of an amended position for T6 to more accurately reflect its precise location) .

5.0 Conclusions

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

6.0 Financial Implications

- 6.1 Notwithstanding the above representations, the responsibility for trees and their condition remain with the landowner. The Council would only be open to a claim for compensation if an application to refuse works to the TPO was made and subsequently refused, and liability for a particular event or occurrence could be demonstrated.

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 visual amenity value and their contribution to the environment and character of an area. As such they are considered to be 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

- a. 1 March 2016 - Tree Preservation Order
- b. 31 March 2016 – Letter from Rachel Kemps
- c. 5 April 2016 – Email from Shawn Nash