

REPORT TO:	PLANNING COMMITTEE	AGENDA ITEM: 5
DATE OF MEETING:	1st JULY 2020	CATEGORY: DELEGATED
REPORT FROM:	STRATEGIC DIRECTOR (SERVICE DELIVERY)	OPEN
MEMBERS' CONTACT POINT:	TOM BEARDSMORE (01283) 595821 THOMAS.BEARDSMORE@SOUTHDERBYSHIRE.GOV.UK	DOC:
SUBJECT:	TREE PRESERVATION ORDER 527: LAND OFF SWAN HILL, MICKLEOVER	REF: TPO527
WARD(S) AFFECTED:	ETWALL	TERMS OF REFERENCE:

1.0 Recommendations

- 1.1 That this Tree Preservation Order should be modified to omit the area outside the main woodland and then confirmed as such.

2.0 Purpose of Report

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

3.0 Detail

- 3.1 A provisional Tree Preservation Order was made in October 2017 (TPO478). Following recent development the future of the trees and their screening qualities was felt to be in doubt. Given that uncertainty and in the interests of protecting the character of the area here, it was felt expedient to protect the trees by way of a TPO. The trees present on site were classed as numerous and in good health, as well as having a high amenity value. It was considered expedient to create a TPO due to the potential threat the trees were under.
- 3.2 The 2017 Order received objection and was reported to the Planning Committee in March 2018. At the meeting, Councillors resolved to confirm the Order with modifications. However, it appears that this resolution was not subsequently acted upon, meaning the Order expired. As the trees still exist and warrant protection, a new Order was required to protect the trees on site.
- 3.3 This TPO was made on 24 January 2020 in respect of multiple trees forming a woodland on land off Swan Hill, Mickleover.
- 3.4 One letter of objection has been received through consultation. In the interest of transparency, previous objections received in response to consultation on TPO478 have also been included below.
- 3.5 One letter of support has been received highlighting the biodiversity benefits from protecting the woodland but also requesting a number of exceptions to works allowed under the Order.

3.6 The objection received against the new Order raises the following points:

- The letter to neighbouring properties makes no reference to Order 478, nor does it state this further Order is an addition to the same.
- No mention is made in the covering letter as to the additional opportunity to comment/object.
- It is contended that TPO527 is invalid as the Council has failed to properly carry out its duties under Regulation 9(a), (b) and (c) of The Town and Country Planning (Tree Preservation) (England) Regulations 2012 ('the Regulations').
- The Council has also failed in their duty, as public servants, to respond to those questions and concerns raised in response to TPO478.
- The reasons for issuing this subsequent order mimic those reasons attached to the original order, word for word, and remain unacceptable, unsubstantiated and without evidence.
- They question why such Orders can be authorised and signed when the total absence of factual reasoning is so apparent.
- Over the years, the local community have repeatedly appealed to the authority to properly manage the land, as it charged to do. The Council's response has been virtually non-existent and untruthful.
- If a tree is deemed to be unsafe or interfering with local property borders, exemptions should be put in place or leniency should be given to this if permission is required for their removal. This should also be the case for dead trees and branches.

3.7 In answer to the comments made, officers have the following response:

- Regulation 9(a), (b) and (c) only applies where a decision is made to confirm or not to confirm. Whilst a resolution was reached, a decision (i.e. a legal confirmation) was not subsequently made. Original correspondence sent at the time of making both Orders sets out that the protection afforded will 'fall' if confirmation does not take place within 6 months.
- An officer wrote to the current objector in response to the 2017 Order, addressing many of the points raised in paragraph 3.6 above, whilst the rest were set out in the report to the Committee in March 2018 (repeated below).
- An officer indicated, in writing, to the current objector the date of the March 2018 meeting and that the report could be viewed online.
- It remains the case that the land affected, other than that now claimed by adverse possession, is under the ownership, and thus maintenance responsibility, of Redrow Homes and Taylor Wimpey Homes. Accordingly, the Council does not hold any maintenance responsibility for the land.

- The land remains under threat from piecemeal sale of land to extend adjoining gardens.
- Protecting the trees by way of a TPO does not prevent appropriate work being applied for and approved. There are also exemptions to the need for express consent where Health & Safety supersedes the visual amenity of the tree(s) or for the removal of deadwood, etc.

3.8 The responses received against TPO478 raised the following points:

- The Order should be amended to exclude the former access strip, that at the bottom of the bund and most immediate to the houses; this land limited in regard to tree numbers and is more overgrown with brambles, etc. The principle of a TPO here though is a public amenity well worth safeguarding.
- The Order should be amended to exclude our land, that that we have maintained (through the lack of others) for the last 15 years using our own time, effort and expense.
- Why is the track at the bottom of the bund included? there are no trees there so nothing to preserve.
- Who owns the woodland? Whilst in general support of the order, some basic maintenance of the trees is required, even if just to lessen the potential to damage adjacent property.
- The trees are becoming quite tall and blocking sunlight from our homes/gardens. Our preference is that the trees are retained albeit in a managed form that keeps their height in check. We would trust the TPO would not stop this from happening or the landowner use it as an excuse not to carry out necessary work, more so with some trees failing in the area of late.
- Are the trees the appropriate species? They are growing so tall with no obvious slowing in their growth rate. Has any sort of risk assessment been carried out on the trees (in terms of potential to fail) given their situation/condition?
- Why has the trees amenity been assessed as high, the land to the opposite side of the bund now so overgrown, it effectively 'screens' the 'planned for screen'? Our amenity has been compromised with local groups of youths congregating here and carrying out anti-social activities.
- The order presumably does not relate to self-set shrubs? Equally, how do we identify specific trees we may wish to prune (if we were to apply) given the dense nature of the woodland and the third-party ownership of such (i.e. trespass concern).
- We have looked after the area (part of the TPO) for the last 15 years, at our own expense through adverse possession. Putting a TPO on land looked after by one party but owned by another will cause confusion and possibly delays if any works are required.
- You want the TPO in place to protect the trees from recent development; what is that development?

- We have been maintaining shrubs and bushes in the area now covered by the TPO; can we still do so, they in our opinion not being trees? What do you consider to be a tree?
- Who should make an application for necessary works; us or the landowner? If it is the landowner it is unlikely to bear fruit due to their limited interest in the land and lack of incentive to assist.
- Is an application required for works deemed necessary by way of Health & Safety?
- Why is the word woodland used when it is clearly not ancient or a woodland - that is misleading.
- The wording used to justify the order is a misrepresentation. The land has been neglected by those responsible for its maintenance and management. Only once in 15 years have you organised a one-day visit to maintain the access strip. There has to be a reason why you have shown no interest in the land for 15 years and now fancifully dress it up as something that it is not.
- We are the only known landowners covered by the Order such others (neighbours) commitment and interest is as passive onlookers only.

3.9 In answer to the comments made at that time, officers gave the following response:

- The trees have been assessed by the Council's Tree Officer where he believes the feature best fits a woodland description. Having visited the site he is of the opinion some thinning and coppicing work (as a minimum) could be carried out here without detriment to the woodland screening qualities. It is preferred however that this be done in a controlled fashion. This could be done by way of a series of approved (by way of applications) long-term tree management plans; that in turn would reduce the administrative burden on any future applicant. He is also of the opinion that the work should be done fairly soon before the trees become too tall.
- Protecting the trees by way of a TPO does not prevent appropriate work being applied for and approved. There are also some exemptions in terms of express consent, where Health & Safety supersedes; or the cutting of deadwood etc.
- The land is not owned by the Council such maintenance of it falls to the landowner. In the main the site is owned by Redrow Homes and Taylor Wimpey Homes although two small parts are owned by local residents. It is the responsibility of the landowner to make the trees safe. Applications can be made however on behalf of the landowner although separate consent would be required from them also.
- The access strip to the immediate south-west of the curtilage of the adjoining houses and between the trees could be removed from the order (by way of modification) without undue detriment. It may be best it be kept open however (i.e. not fenced off) to allow maintenance access, as was originally planned.
- TPO guidance advises that authorities may consider taking into account other factors such as importance to nature conservation. The Council's Tree Officer has

opined that the feature certainly contributes to local wildlife habitats in addition to its primary use as a vegetative screen.

- A tree has been described as a woody perennial plant typically having a single stem or trunk growing to a considerable height and bearing some lateral branches at some distance from the ground. The Council would be willing to advise on this further should the need arise.

4.0 Planning Assessment

- 4.1 There has been no material change in circumstances since March 2018 and it remains that the trees could otherwise be removed, reducing the screening and amenity value they provide.
- 4.2 It is noted that the Committee resolved to confirm the 2017 Order subject to modification to omit the area outside the main woodland. This area is a strip of land to the immediate rear of gardens on Sandpiper Lane. It remains prudent to repeat this modification given the original plan has been included in the new Order in error.
- 4.3 It is expedient in the interests of amenity to make the trees the subject of a tree preservation order in accordance with advice set out in the Government's Planning Practice Guidance. No changes to the provisional order are required.

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 important trees contributes towards the Corporate Plan themes of enhancing biodiversity across the District, tackling climate change and enhancing the attractiveness of South Derbyshire.

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

- a. 24 January 2020 - Tree Preservation Order made
- b. 25 February 2020 - Letter of support received
- c. 27 February 2020 - Consultation end date
- d. 4 May 2020 - Objection received