

REPORT TO:	PLANNING COMMITTEE	AGENDA ITEM: 5
DATE OF MEETING:	16th JANUARY 2018	CATEGORY: DELEGATED
REPORT FROM:	STRATEGIC DIRECTOR (SERVICE DELIVERY)	OPEN
MEMBERS' CONTACT POINT:	RICHARD RODGERS (01283) 595744 richard.rodgers@south-derbys.gov.uk	DOC:
SUBJECT:	PROPOSED TREE PRESERVATION ORDER 472 – LAND TO REAR OF 45-59 MANCHESTER LANE, HARTSHORNE	REF:
WARD(S) AFFECTED:	WOODVILLE	TERMS OF REFERENCE:

1.0 Recommendations

1.1 That this Tree Preservation Order (TPO) be confirmed without modification.

2.0 Purpose of Report

2.1 To consider confirmation of this TPO.

3.0 Detail

3.1 This tree preservation order was made on 24th August 2017 in respect of a single Ash tree and 140 hawthorn trees (forming a group) on land to the rear of 45 -59 Manchester Lane, Hartshorne.

3.2 The TPO was made at the request of the owner of the land on which the trees sit. The land (that to the south west of the trees) is currently the subject of a planning application 9/2017/1184 for the siting of 4 holidays cabins for holiday accommodation. A similar proposal was previously considered and refused – see application 9/2017/0342.

3.3 A number of comments relating to the proposed Order have been received mainly from local residents and are summarised as follows:

- The collective has always been seen more as a native hawthorn hedge, maintained (and owned) by the adjacent farmer. To confirm it (as trees) as such could be flawed and open to legal challenge;
- The feature has the same planting pattern and unbroken continuation of a hedge, principally of the same species (hawthorn) and has been part maintained (on the agricultural side – i.e. flailed) as a hedge. It is not normal farming practice to flail trees;

- Quoting Stanton v Jones 1995 a hedge is a number of woody plants , whether capable of growing into trees or not which are so planted as to be in a line with, and when mature to be so integrated together as to form both a screen and a barrier – these definitions clearly apply to this boundary;
- Hedgerows are protected by separate legislation. That legislation would apply here;
- DCLG states hedges cannot be protected by way of a TPO;
- No other SDDC TPO has this appearance;
- Necessary maintenance of the hedge has been held up by a boundary dispute;
- The hedge serves no amenity and was arranged to be laid (prior to the serving of the TPO);
- The hedge has amenity in terms of acting as a field boundary only, providing pattern and texture to agricultural land;
- The Council's Tree Officer has said the larger dominant hawthorns will become standouts. However he also says it currently has the appearance of an overgrown hedge;
- Plans relating to the failed planning application labelled the feature as hedge. Why the sudden shift in terminology?
- The hedge does not warrant an Order, it having no future potential other than serving as a field boundary, rather than a visual 'buffer'; and a well-kept hedge has greater environmental benefits (as a habitat for wildlife) than simply a visual buffer. Relict hedgerows are discouraged as inferior habitats;
- Why is this hedge protected and not all others (by way of a TPO). If it is for height only I suggest it is flawed;
- I am surprised and shocked the council has chosen to protect the hedge from future development. At the time of writing there was no approved development from which to protect the hedge from;
- The hedge will not always be there, as to its screening qualities. Hedges however require correct maintenance which limits their screening qualities;
- The hedge is situated in an area deemed important by SDDC's landscape adviser as 'a setting for views' – the retention of the overly tall hedge is contrary to that opinion and to the locality and its history;
- Hedgelink refers to hedges being used to screen unsightly buildings;
- Hawthorn is not a threatened species;
- Its height has negative impact on the land; crops not growing near to it due to shading;
- The hedge is an eyesore and should be kept in line (in terms of its height) with other hedges in the locality;
- The applicant is using his position and knowledge of the system to obtain personal gain;
- The land (that related to the above mentioned planning applications) was cleared of trees and hedgerow as an act to negate any prospect of a TPO here. Many of those trees had greater amenity than this 'hedgerow' and their removal was purely wanton vandalism;
- The supporting arboricultural report is weighted in favour for whom it is written. Even then however it admits the feature is barely suitable as regards public visibility. "Having studied the method of assessment used for TPO's (TEMPO) I find the approach weak and open to subjective views";
- The reasons for the order mentions 'threat from development'. As there is no threat to the hawthorn from the applicant, we assume the Planning Department considers the present maintenance of this boundary as a

problem and the TPO placed to prevent maintenance in order to protect the screen for the pending planning resubmission whereas the previous application suggested the hedge be reduced and brought back into management;

- Comments in the applicants tree report contradict with SDDCs reasons for the TPO, in terms of age of the trees (mature vs continue to grow);
- The management of the hedge should be left to the owner (understood to be another) and the Council by way of a Hedgerow notification;
- Hawthorn is probably our most common shrub having been extensively used as a hedgerow plant. Its common name is derived from the Anglo Saxon 'haga thorn' which literally means 'hedge thorn';
- The history of a hedge or boundary can be traced back by way of historic maps.
- Simply we do not believe anyone would plant 140 common hawthorns at such short distance apart if they intended to plant a line of trees:
- Usually a TPO is requested by a person(s) concerned that the developer may cut down trees, not by a developer trying to preserve them. We object to the morals behind such a request.

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

- The Council is duty bound to consider a request for a TPO. In this case the request was accompanied by a report from arboricultural consultants who supported the making of the order. After internal discussion it was concluded that the request was legitimate and that a provisional order made;
- The feature has also been assessed by the Council's Tree Officer where he believes a large number of the hawthorns within the group have evolved from hedgerow type specimens into trees;
- It is believed given the evolution of the feature here, it cannot be protected by way of Hedgerow Legislation, it not meeting the necessary criteria to warrant its lawful retention.
- There is contrary evidence to support that a more natural feature than a regimentally cut hedge has greater benefits for local wildlife;
- The land on which the trees sit is not a reason not to confirm the order. The feature is, as originally described felt to be under threat from development of the land to which it abuts.
- The feature is not felt to be so high or so large as to impinge on the ability of the adjacent land in terms of growing crops;
- DCLG TPO Guidance mentions where relevant to an assessment of the amenity value of trees or woodlands, authorities may consider taking into account other factors such as importance to nature conservation.
- 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.

5.0 Conclusions

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

6.0 Financial Implications

6.1 The Council would only be open to a claim for compensation in relation to any future planning application 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 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 August 2017 – Provisional Tree Preservation Order
- b. Various letter and emails from local residents