

REPORT TO:	PLANNING COMMITTEE	AGENDA ITEM: 6
DATE OF MEETING:	19th MARCH 2019	CATEGORY: Delegated
REPORT FROM:	STRATEGIC DIRECTOR (SERVICE DELIVERY)	OPEN
MEMBERS' CONTACT POINT:	CHRIS NASH (01283) 595926 chris.nash@southderbyshire.gov.uk	DOC:
SUBJECT:	Tree Preservation Order 502: The Bungalow, Colliery Lane, Linton	REF:
WARD(S) AFFECTED:	Linton	TERMS OF REFERENCE:

1.0 Recommendations

1.1 That this tree preservation order should be confirmed.

2.0 Purpose of Report

2.1 To consider confirmation of this tree preservation order.

3.0 Detail

3.1 This tree preservation order (TPO) was made on 16th November 2018 in respect of both individual and groups of trees (of various species) including Field Maple, Silver Birch, Norway Maple, Cherry, Pine and Oak, situated on land at The Bungalow, Colliery Lane, Linton.

3.2 The TPO was made following receipt of planning application ref. 9/2018/0867 which shows (through its indicative layout) the amenity offering of the trees would be significantly compromised, replaced by housing and associated access, etc.

3.3 One letter of objection has been received through consultation stating:

- There is evidence to suggest that the TPO has been applied unfairly in an attempt to frustrate development;
- The TPO process has been used to fabricate a single reason for refusal on a site that would otherwise be deemed a suitable for residential development;
- Whilst the group of Silver Birch (G1) and Ash, (G3) were shown on the application to be retained a third group of trees Norway Maple, Cherry and Pine (G2) located through the centre of the site, was proposed to be removed;
- An Arboricultural Survey supported the application and judged all trees to be category B trees but those trees within area G2 all parties agreed were planted by the landowner approximately 10 years ago;
- Category A trees are defined as 'trees of a high quality and value, including public visual amenity value. It is usual for such trees to be retained unless the planning merits of a particular scheme or layout override'. Category B trees do not have the same amenity value;

- There have been no formal objections to the planning application including the Council's Tree Officer, DWT or the National Forest Officer;
- The group proposed for removal in the application are barely visible from outside the site;
- The G2 group do not offer a high level of amenity to anyone outside the application site;
- It is not clear that G2 meet the criteria for amenity value as set out in government guidance;
- There is no evidence that government guidance has been considered in this TPO;
- The Council's poorly worded policy appears to allow edge of settlement sites to be developed based on recent appeal decisions. This may explain the placing of the TPO;
- An FOI request showed that there had been no communication between planning officers and tree officers to determine the value of the trees;
- The TPO appears to have been applied unilaterally in the absence of any professional advice;
- The applicant has never proposed the removal of G1, G3, T1, T2 or T3 which may pass the test of amenity and amenity value. However, it is clear that group G2 does not meet the relevant requirements.

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

- There is no evidence to demonstrate that the TPO has been applied unfairly in order to frustrate development. The existing trees were assessed for their amenity value, and so to ensure their immediate protection the TPO was progressed. There is no requirement for the landowner to be notified in advance.
- The site lies outside of the settlement confines of Linton where new housing is strictly limited. Application ref. 9/2018/0867 was refused on four grounds (principle, visual and landscape impact, impact on retained trees and design)
- The group of trees to the centre of the site, to be removed, offer amenity value and are graded as category B specimens.
- Age of the trees is not a determining factor, noting that the TPO procedure allows for trees yet to be planted to be made subject to a TPO once planted. As noted in the previous point, group G2 are category B trees.
- Whilst category A trees might attract greater likelihood of protection, it is not uncommon for category B specimens to be made subject to a TPO. Protection is based on a number of factors, including amenity offering, health of the tree(s) and anticipated lifespan, and not the arboricultural categorisation.
- Whilst there were no formal objections to the application from the Tree Officer, Derbyshire Wildlife Trust (DWT) or the National Forest Company (NFC), both DWT and the NFC noted the removal of trees and suggested compensation was required and/or views of the Tree Officer should be sought. It is not a pre-requisite for the Tree Officer to raise objection, or for professional advice to be in-hand, for a TPO to be made.
- Group G2 are clearly visible from the west of the site, along Colliery Lane, rising above the boundary hedgerow to Sealwood Lane. It is also visible across adjacent land from the south, through the group of Silver Birch (Group 1) along the southern boundary.
- The amenity value of the group is recognised in the officer's assessment leading to the refusal of application ref. 9/2018/0867. The trees, along with the boundary hedgerow to Sealwood Lane provide a green 'buffer' to the edge of Linton when approaching from the west, in particular. They are publically visible.

- ‘Amenity’ is not defined in law, but the Planning Practice Guidance (PPG) states TPOs *“should be used to protect selected trees and woodlands if their removal would have a significant negative impact on the local environment and its enjoyment by the public”* and before confirming authorities *“should be able to show that protection would bring a reasonable degree of public benefit in the present or future”*. This is public benefit is considered to exist, as outlined above, and removal of the trees would have a significant negative impact.
- Regard has been had to the PPG in making the TPO and in preparing this report.
- The wording of planning policy is not relevant to the decision as to whether to protect trees or not.
- Protection has extended to those trees to be retained given direct and liveability concerns arising from development in close proximity to the trees.

3.5 In addition to the above, it should be noted that the tree survey provided with the application was not an Arboricultural Impact Assessment (AIA) which assessed the impact of the particular development proposals on the trees. It did however state *“in an effort to ensure any issues are resolved from the outset it is recommended that a site visit is undertaken with the Local Authority’s Planning Case Officer and Tree Officer to ensure that the approach for development and tree retention is suitable”*. No request was ever made for such a visit prior to the application being made.

4.0 Planning Assessment

4.1 It is expedient in the interests of amenity to make the trees the subject of a TPO in accordance with advice set out in the PPG.

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

- a. 16 November 2018 – Tree Preservation Order.
- b. 20 December 2018 – Letter of objection.