

PLANNING COMMITTEE

8th May 2017

TREE PRESERVATION ORDER (NO. 19)2016 – Trees on land at Plymouth Drive, Barnt Green.

Relevant Portfolio Holder	Councillor C B Taylor
Portfolio Holder Consulted	No
Relevant Head of Service	Head of Environmental Services
Ward(s) Affected	Barnt Green
Ward Councillor(s) Consulted	No
Non-Key Decision	

1. SUMMARY OF PROPOSALS

- 1.1 The Committee is asked to consider the confirmation with modification of Tree Preservation Order (No.19) 2016 relating to trees on land at Plymouth Drive, Barnt Green.

2. RECOMMENDATIONS

- 2.1 It is recommended that provisional Tree Preservation Order (No.19) 2016 relating to trees on land at Plymouth Drive, Barnt is confirmed with modifications as shown in appendix (1).

3. KEY ISSUES

Legal Implications

- 3.1 Section 198 of the Town and Country Planning Act 1990 gives local planning authorities powers to make tree preservation orders if they consider such orders **expedient** in the **interest of amenity**. Tree preservation orders are to be made in accordance with the procedure under the Town and Country Planning (Trees) Regulations 2012 covers this procedure.
- 3.2 ‘Amenity’ is not defined in law, and is a matter of judgment for the planning authority. However, Government guidance states that an important factor is the degree of public benefit or enjoyment by the trees including visibility of the trees by the public. Another relevant factor is the importance of the trees in relation to their characteristics. Expediency is usually demonstrated if there is a risk that the trees will be managed in a way that is significantly adverse to the amenity of the area.
- 3.3 As a result of the Tree Preservation Order, the landowner will need to apply to the Council for permission to manage the trees. There is no fee for the application and officers’ practice is to work pro-actively with the developer to enable them to manage the property without undue damage to the protected trees. There is a right of appeal against the authority’s decision on an application to carry out works to a tree protected by a tree preservation order.

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- 3.4 Members are aware that there is no right to appeal the confirmation of a tree preservation order. Objectors, with sufficient interest in the matter, are able to apply for the High Court for a review of the Council's decision to confirm the order if any legal or procedural requirements have not been complied with.

Financial Implications

- 3.5 There are no significant financial implications for the Council relating to the confirmation of the TPO.

Service / Operational Implications

Legal Tests and Background:

- 3.6 The provisional order is attached at Appendix 2. The recommendation is to confirm the order with the modifications shown in Appendix 1. The main change is that the group orders have been reduced and individual trees within the former groups have been protected instead.
- 3.7 The officer's assessment of the amenity value of the trees within the order are set out in paragraph 3.8 below, paragraph 7.1 and the TEMPO assessment which is attached at Appendix 7.
- 3.8 The TPO was provisionally made on the 30th November 2016 to protect the trees in response to the risk of adverse management of some of the trees in view of the application for development of 1 Plymouth Drive and as such officers believe it was expedient to make the Order and is expedient to confirm the Order in its modified form. In giving trees local to 1 Plymouth Drive such a consideration it was felt prudent due to the quality of other trees within adjoining properties to widen the scope of the order to included their protection also and create the provisional order as shown in appendix (2). Due to limited access and privacy issues the provisional order was raised with the inclusion of three groups of trees with the intention to review the tree stock within these groups having later agreed access with the owners of the land. This has now been done hence the necessity to modify the order to that as shown in appendix (1).

The following two objections have been received in respect of the provisional TPO having been raised.

1. Letter From Mr & Mrs Eden: Dated 28th December 2016 (Appendix 3)

Supported by a Jeff Marlow Consulting Limited, Arboricultural Report: Dated 21st December 2016 & BS5837:2012 Report: Dated 28th November 2016 (Appendix 4). It is unclear from the report whether Jeff Marlow is also representing a Mr David Courts at the same address.

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My comments in relation to the points raised within the letter and Jeff Marlow Arboricultural reports are as follows:

- a. I feel that the trees highlighted for inclusion within the modified TPO do offer a high level of amenity value to the area in that they are highly visible from a number of local properties and from substantial distance of the surrounding area. They are of very good quality with a lengthy expected future life span and add greatly to the character of the area.
- b. I would agree with the comments made in both the letter and arboricultural reports regarding the unsuitability in use of three group designation areas on this site in a permanent order as this would cover trees of an unsuitable quality and grade to be included within the order. However the group designation areas were included at the provisional stage due to limited access and to respect the privacy of residents at the time of raising the order but ensure valuable trees were protected. It was always the intention to contact landowners and arrange access to survey these group areas in more detail and define the trees to be covered in the final order more accurately, when convenient for them, which has now been done. Therefore I feel that all these issues have been addressed.
- c. The roots of T4 Red Wood are certainly the cause of the level of disturbance highlighted as being experienced in the hard standing and surfacing of the drive way to number 10 Plymouth Drive, Pathway to Peters Court and two local decorative garden wall sections, one on each property. However this tree is by far the best quality tree within the site and is a major historic feature tree, highly prominent within the area offering an extremely high level of amenity value. Therefore I feel that all possible other solutions must and should be explored to resolve the damage caused before the management of the tree is considered to address them.

2. Email from Dr Azmi: Dated 6th December 2016 from (Appendix 5)

My comments in relation to the points raised within the letter are as follows:

- a. The roots of T4 Red Wood are certainly the cause of the level of disturbance highlighted as being experienced in the hard standing and surfacing of the drive way to number 10 Plymouth Drive, Pathway to Peters Court and two local decorative garden wall section one on each property. However this tree is by far the best quality tree within the site and is major historic feature tree highly prominent within the area

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offering an extremely high level of amenity value. Therefore I feel that all possible other solutions must and should be explored to resolve these matters before any consideration in the management of the tree to address them is considered. TPO protection does not prevent any future management of a protected tree but would require our consent and need to be fully justified. Therefore I feel due to the quality of this tree it should be included within the order at this time.

Conclusion

- 3.9 The trees covered by this order are all highly prominent trees of very good quality. They offer a high degree of visual amenity value to the site and area while adding greatly to the character of area and Barnt Green in general.
- 3.10 Therefore in my view the trees merit protection and I would recommend to the committee that the order is confirmed with the modifications as shown in appendix (1) of this report.
- 3.11 Policy Implications- None
HR Implications- Officers consider that there is no breach to the landowner's rights to his property as the tree preservation order is in accordance with the law and is proportional to protect the environment and public amenity.
Council Objective 4- Environment, Priority C04 Planning
- 3.12 Climate Change / Carbon/ Biodiversity- The Proposal in relation to confirming the TPO has a positive impact on the environment.

Customer / Equalities and Diversity Implications

- 3.13 The customers have been provided with the relevant notification and the responses received are attached in the appendices. The customers will receive notification by post of the decision of the committee.
- 3.14 Equalities and Diversity implications- None

4. RISK MANAGEMENT

There are no significant risks associated with the details included in this report.

5. APPENDICES

List Appendices.

Appendix (1) Plan and Schedule of Modified Order

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- Appendix (2) Copy of Provisional Order.
- Appendix (3) Letter Of Objection Dated 28th December
- Appendix (4) Jeff Marlow Consulting Limited, Arboricultural Report: Dated 21st
December 2016 & BS5837:2012 Report: Dated 28th November
2016
- Appendix (5) Email Of Objection : Dated 6th December 2016
- Appendix (6) Photographs of Trees within the Order
- Appendix (7) TEMPO Assessment

6. BACKGROUND PAPERS

None

7. KEY

TPO - Tree Preservation Order

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