

# **PLANNING COMMITTEE**

**6<sup>th</sup> November 2017**

Tree Preservation Order (No.11) 2017

## **– Trees on land adjacent to 73 Linthurst Newtown, Blackwell**

Relevant Portfolio Holders	P J Whittaker (Environmental Services and Leisure)
Portfolio Holder Consulted	No
Relevant Head of Service	Head of Environmental Services
Ward(s) Affected	Linthurst
Ward Councillor(s) Consulted	No
Non-Key Decision	

### **1. SUMMARY OF PROPOSALS**

- 1.1 The Committee is asked to consider the confirmation of Tree Preservation Order (No.11) 2017 relating to trees and woodland on land adjacent to 73 Linthurst Newtown, Blackwell.

### **2. RECOMMENDATIONS**

- 2.1 It is recommended that Tree Preservation Order (No.11) 2017 relating to trees and woodland on land adjacent to 73 Linthurst Newtown, Blackwell ('the Site') is confirmed without modification as shown on the plan and schedule appendix (1).

### **3. KEY ISSUES**

#### **Financial Implications**

- 3.1 There are provisions for compensation in specified circumstances, if further to confirmation of the order, consent to carry out works on trees is refused or granted subject to conditions. There are also provisions for a statutory challenge against the Order if the order is deemed to be made or confirmed unlawfully. Officers cannot quantify either the risk of this happening or the likely expenditure if they do.

#### **Legal Implications**

- 3.3 The Town and Country Planning (Tree Preservation) (England) Regulations 2012 cover this procedure. The power to make a TPO is found at section 198 of the Town and Country Planning Act 1990.

Section 198 of the TCPA 1990 provides (emphasis added):

“(1) If it appears to a local planning authority that it is **expedient in the interests of amenity to make provision for the preservation of trees or woodlands in their area, they may for that purpose make an order with**

respect to such trees, groups of trees or woodlands as may be specified in the order.

(2) An order under subsection (1) is in this Act referred to as a “tree preservation order”.

Regulation 5 of the Town and Country Planning (Tree Preservation) (England) Regulations 2012 provides:

“5.— Procedure after making an order

(1) As soon as practicable after making an order, and before confirming it, the authority which made it shall—

(a) serve on the persons interested in the land affected by the order—

(i) a copy of the order; and

(ii) a notice containing the particulars specified in paragraph (2);

(b) make a copy of the order available for public inspection, in accordance with paragraph (3); and

(c) in the case of an order made following service of a notice under section 211(3) (preservation of trees in conservation areas), serve on the person who served that notice the information specified in sub-paragraph (a).

(2) The particulars mentioned in paragraph (1)(a)(ii) are—

(a) the reasons for making the order;

(b) a statement that objections or other representations with respect to any trees, groups of trees or woodlands specified in the order may be made to the authority in accordance with regulation 6;

(c) the date, being at least 28 days after the date of the notice, by which any objection or representation must be received by the authority; and

(d) a copy of regulation 6.

(3) A copy of the order shall be made available for inspection, free of charge, at all reasonable hours, at the offices of the authority by whom the order was made; and where an order is made on behalf of an authority, it shall be made available for inspection also at the offices of the authority on whose behalf it was made.

Regulation 7 of the Town and Country Planning (Tree Preservation) (England) Regulations 2012 provides (emphasis added):

“7.—(1) The authority **shall not confirm an order which they have made unless they have first considered objections and representations duly made in respect of it and not withdrawn.**

(2) An authority **may confirm an order with or without modifications.**

(3) Where an order is confirmed it shall be endorsed to that effect and the endorsement shall also indicate—

(a) that the order was confirmed with modifications or without modifications, as the case may be; and

(b) the date on which it was confirmed.

(4) Where an order is confirmed with modifications, the modifications shall be indicated in the order by distinctive type or other means.

(5) A modification under paragraph (2) may not add to the Schedule to the order (and the map) references to a tree to which the order did not previously apply.”

### **Service / Operational Implications**

#### **Background**

3.4 TPO 11 of 2017 consist of a woodland area, 6 groups and 19 individual trees as shown in the schedule to the order appendices (1). It was made because there is considered to be a continued threat of trees being removed to accommodate the potential of development on the site. The area of Blackwell contains a high volume of mixed species and varied age class trees that add greatly to the overall character of the area. The trees within this site contribute to that character of the area in that they are seen from a number of local properties, and public vantage points off Foxes Close, Linthurst Newtown and Public Foot Path / Right of Way to the north of the site. Being visible from these locations, they therefore contribute to the amenity of the area.

3.5 The PPG states that:

“The woodland category’s purpose is to safeguard a woodland as a whole. So it follows that, while some trees may lack individual merit, all trees within a woodland that merits protection are protected and made subject to the same provisions and exemptions. In addition, trees and saplings which grow naturally or are planted within the woodland area after the Order is made are also protected by the Order.” (Tree Protection Orders, paragraph 028)

The woodland designation was made because In the UK, woodland is defined by the Forestry Commission and the UK Government in the UK Forestry Standard and national Forestry Statistics as the following:

*‘land under stands of trees with a canopy cover of at least 20%, including integral open space. There is no minimum height for trees to form a woodland at maturity, so the definition includes woodland scrub’*

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The woodland area included within the order clearly has a density of trees that provide well above the 20% level of canopy cover required therefore the use of this designation is felt to be appropriate on this site.

- 3.6 The site was subject to a previous Tree Preservation Order raised in 2016 (Bromsgrove District TPO (13) 2016). This TPO was made in provisional form on the 3<sup>rd</sup> August 2016 to protect the trees and woodland from being felled or mismanaged. The order was made in view of concerns having been raised in previous weeks by local residents who had contacted the Council highlighting that chainsaw activity was taking place on the site. When officers attended the site it was found that trees had clearly been felled. On further investigation it was discovered that Freefield Investments Ltd held an interest in the land. Freefield Investments Ltd is a property development company who are understood to specialise in acquisition of land for then onward sale once outline planning permission has been granted. The site is designated Green Belt land and is currently under consideration for future removal from the Green Belt as part of the Strategic Housing Land Availability Assessment (SHLAA) process being undertaken by the Council's Strategic Planning section.
- 3.7 The validity of this order was contested and an objection raised by Freefield Investments Ltd on the grounds listed in their letter to the council reference code MAF1/JDP dated 08<sup>th</sup> August 2016 and supported by the documentation from Grove Tompkins Bosworth Solicitors, Barton Heyett Arboricultural Consultants and Jerry Ross Arboricultural Consultants and Cotswold Wildlife Surveys on behalf of Mr and Mrs Fell as shown in appendix (2). Therefore, in line with standard procedure where an objection are received at the provisional stage of a new TPO order it was taken to the January 2017 planning committee meeting to request its confirmation. The planning committee confirmed the TPO without modification and the order was formally confirmed on the 12<sup>th</sup> January 2017.
- 3.8 Access Homes LLP then raised further objection to BDC TPO (13) 2016 and sought to have the TPO quashed by the High Court by way of statutory challenge. Access Homes LLP is the registered owner of the site and the land registry documents indicate that they were registered as the freehold owners in November 2016. The grounds of the challenge were as follows:
- Misdirection as to section 198 of 1990 Act and PPG, or failure to adequately give reasons
  - Flawed approach to "Woodland"/ acting for an improper purpose
  - Procedural unfairness based on article 1 and 6 of ECHR made up of:-
    1. Flaws in site visit (presence of tree officer and his ability to address members in private

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2. Flaws in committee process (inability to be able to address the committee orally)

- 3.9 Having fully evaluated the grounds of challenge and having being able to carried out a more extensive site survey due to an improved level of access to the site during the winter period allowed by the decline of heavy ground vegetation cover, the following conclusions were arrived at:

The extent of “Woodland” designation cover within BDC TPO (13) 2016 was found to be too extensive due to the tree volume in some sections of the site being lighter in density than first thought.

Also although it is BDC’s usual practice for the Development Control Manager to lead the site visit (albeit with the tree officer present), on this occasion the tree officer, who was promoting the TPO was the sole officer in attendance at the site visit before the committee meeting on 9 January 2017. It was therefore accepted by the parties that the attendance of the site visit by the tree officer without the Development Control Manager, as is the usual practice of the Defendant, was sufficient in the circumstances of this case to give the impression of procedural unfairness.

Therefore, it was agreed that the best way forward would be to quash the original order and, accordingly, TPO (13) 2016 was quashed by consent.

- 3.10 A new provisional order was then raised (Bromsgrove District Tree Preservation Order (11) 2017) on the 4<sup>th</sup> July 2017 as shown in appendix (1). The new order’s “Woodland” designation is reduced in extent it being considered that this provided tree protection more relevant to the nature and density of the tree stock on the site.
- 3.11 The new order also contains 19 individual trees and 6 groups of trees as shown in the schedule attached to appendix (1). The revised level of tree protection within the new order is felt to be accurate and consistent with the level and density of valuable tree stock on the site and therefore addresses the argument regarding the inappropriate level of cover within the previous order.

#### 4.0 The power to make a TPO

4.1 As set out in 3.3 above, the power to make a TPO is found at s.198 of the TCPA 1990. A TPO may be made where it appears that such an order is ‘expedient in the interests of amenity to make provision for the preservation of trees or woodlands’. The question is therefore: is it expedient in the interests of amenity to confirm this order? As also noted at 3.3 above it is possible for this committee to confirm this order without modification, confirm the order with modification or not confirm the order.

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4.2 The 'Planning Practice Guidance' or 'PPG' provides guidance on what 'amenity' and 'expedient' mean in practice (appendix 8).

**4.0 Representations Received (Objections)**

- 4.1 The following three objections have been received in respect of the Bromsgrove District Council TPO (11) 2017.
- 4.2 Letter from Harrison Clark Rickerbys Solicitors dated 4<sup>th</sup> August 2017 as shown in appendix (3) On behalf of Access Homes.
- 4.3 My comments in relation to the points raised within the letter are as follows:
- The justification and reason the order has been raised is that tree work had clearly been under taken on the site and was progressing to remove trees and other vegetation from the land. Also relevant is the nature of the companies owning the land which are understood to specialise in acquisition of land for then onward sale once outline planning permission has been granted. Therefore it was reasonable to assume the site would be largely cleared of tree stock to accommodate development on the site.
- 4.4 The large proportion of trees within the site are visible from a number of public vantage points around the site including Linthurst Road, Foxes Close and Public Foot Path to the North of the site (see maps appendix (7) highlighting the location of the public footpath to the North of 73 Linthurst Newtown and appendix (9) photographs of site). They are also visible from a number of local properties and gardens. Therefore, I feel that the trees do offer an acceptable level of visual amenity value and it is appropriate to make the main overriding reason for the raising of the order being in the interest of amenity.
- 4.5 Access Homes LLP was not directly served notice of the raising of the new TPO but Freefield Investments Ltd were and are known to be a linked company to Access Homes LLP under the management of the Fell Family. Therefore, I feel that that all parties concerned with this land were made aware of the TPO at the point it was raised. This would appear to be confirmed by the objection received. Two notification site notices were also put up on site on the 5<sup>th</sup> July 2017.
- 4.6 In terms of expediency for the raising of the order I feel that the known nature of the companies who own the land and the evidence of the level of work that was being gradually undertaken on the site along with the value of the trees in this setting is adequate justification in term of expediency to the raising of the order.
- 4.7 Due to the level of visibility both from public vantage points and local properties I feel that the loss of any currently protected trees within the site would undoubtedly have a detrimental influence on the outlook from these vantage points and the overall character of the area and therefore the

enjoyment of passers-by and local residents would be affected. As well as the visual amenity benefits the tree stock within the site especially the woodland area also offers a high level of habitat value to the area. If any major volume of tree stock within the site was lost or it would undoubtedly have a major impact on the amount of wild life that benefit offered by the overall tree cover and could drive the wild life from within the site and possibly wider area of adjoining land. TPO PPG indicates that these other factors are relevant to an assessment of amenity but they are not alone sufficient to warrant making an order (see appendix (8) 'other factors'). TPO PPG also highlights under the heading "Individual, Collective and Wider Impact" that an assessment of the particular importance of an individual tree, group of trees or of woodlands by reference to their characteristics is advised (see appendix (8)). One criteria under this heading is 'future potential as an amenity'. I consider that the trees would have great future potential as an amenity to the residents, visitors or users of any future development on this site.

4.8 In relation to the other points raised in the letter:

- A copy of the consent order is attached at Appendix 11. The letter asserts that contrary to the consent order, TPO 11 of 2017 is more restrictive than the plan attached to the consent order. Officers are of the view that this matter is not relevant to the committee's consideration and in any event, as TPO 11 of 2017 is far less extensive than the plan attached to the consent order, does not accept Harrison Clark Rickerbys' assertion. If it is necessary to make an amendment to TPO 11 of 2017 because of the consent order, the Council has the power to vary the order under section 333(7) of the Town and Country Planning Act 1990.
- As set out in paragraph 3.3 above, regulation 5 of the Tree Preservation Regulations, the requirement is to make the order available and to serve the order on people interested in land affected by the order. In this and other orders, the Council considers that occupiers of property in the vicinity of the protected trees are sufficiently affected by the order to warrant a notice.
- The issue of payment of fees and disclosure of information is not directly relevant to the committee's decision. For information, the fees have been paid and disclosure has been made further to the information request.

Report objection from Barton Hyett Associates Arboricultural Consultants on behalf of Access Homes LLP dates 28.07.2017 as shown appendix (3).

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

4.10 The large majority of trees within the site are visible from a number of public vantage points around the site including Linthurst Road, Badger Way and Public Foot Path to the North of the site (see map appendix 7). They are also visible from a number of local properties and gardens. Therefore the trees do offer an acceptable level of visual amenity value and it is appropriate to make

the main overriding reason for the raising of the order being in the interest of amenity.

- 4.11 It is accepted that the visibility of some trees and certainly trees within the woodland block is limited. Unsurprisingly, some trees within the woodland block obscure other trees within the woodland block. TPO guidance under the heading **Visibility** see appendix (8) is "The extent to which trees or woodlands can be seen by the public will inform the authority's assessment of whether the impact on the local environment is significant. The trees, or at least part of them, should be visible from a public place such as a road or footpath, or accessible by the public". It is clear that the guidance does not require that every single tree must be visible from a public place. PPG goes on to highlight within the next paragraph titled **Individual, Collective and Wider Impact** "Public visibility alone will not be sufficient to warrant an Order".
- 4.12 The authority is advised to also assess the particular importance of an individual tree, of groups of trees or woodlands by reference to its or their characteristics including, size and form, future potential as an amenity, rarity, cultural or historic value, contribution to and relationship with the landscape and contribution to the character or appearance of a conservation area". Therefore, I feel that even though some trees are not visible from a public place or individually visible there is justification for their inclusion within the order in view of the wider collective benefits they given in relation to the points mentioned in the above paragraphs.
- 4.13 The TEMPO assessment chart showing how the trees were graded in terms of condition, longevity, visibility, expediency and other factors are attached in appendix 10. The TEMPO assessment was sent to Access Homes Limited on 22 August 2017 further to an information request.
- 4.14 Email received from Mr Matt Fell dated 4<sup>th</sup> August 2017 as shown appendix (4). My comments in relation to the points raised within the letter are as follows:
- 4.15 I feel that the group designation of G1 within the order is appropriate as although if evaluated individually arguably some trees might not be of sufficient quality to warrant TPO protection. Together they form a valuable cohesive group that is highly prominent to users of Linthurst Newtown and residents opposite the site therefore offering a high degree of visual amenity value to the area.
- 4.16 T15 is an appropriate distance from the property and although there is some minor root plate damage to the local paved area there is no indication that it might damage the property. There is some squirrel damage within the crown but there are no obviously over weighted branches this could be managed by a suitable level of pruning.
- 4.17 T16 & T17 are partially visible from vantage points on the Linthurst Road and are highly visible from the gardens and properties to the South Eastern side of 73 Linthurst Newtown offering a high degree of screening and visual amenity



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value to residents. T17 Willow has received some crown management pruning to ensure a safe crown distance is maintained from the local power lines. However, the tree is of a good age and there is a substantial amount of crown remaining on what is a perfectly viable tree.

- 4.18 I accept that not all of the trees identified within the new order are visible from a public place but they merit consideration in view of their future potential as an amenity, rarity, cultural or historic value, contribution to and relationship with the landscape and benefit they provide to the character of the area. Therefore, they should remain within the order.

## **5.0 Representations Received (Support)**

5.1

We have received 22 correspondence of support for the order from local residents as shown in appendix (6)

There is clearly a very strong local concern regarding the potential threat of mismanagement or loss of trees on the site as evidenced by the letters of support we have received for both the previous and revised new order.

## **6.0 conclusions and recommendations**

6.1

Having given full consideration to all the points raised in terms of objection and extensively surveyed and evaluated the tree stock and its relevance in this setting I feel that it is worthy of TPO protection. I therefore recommend that the order as shown in appendix (1) is confirmed without modification.

## **7. Customer / Equalities and Diversity Implications**

- 7.1 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.
- 7.2 Equalities and Diversity implications- None

## **8. RISK MANAGEMENT**

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

## **9. APPENDICES**

Appendix 1– Copy of Provisional Order  
Appendix 2 – Copy of Objections to BDC TPO (13) 2016

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- Appendix 3 – Letter of Objection from Harrison, Clark and Rickerby Solicitors
- Appendix 4 - Report of Objection from Barton Hyett Arboricultural Consultants
- Appendix 5 – Email of Objection from Mr Fell Dated 4<sup>th</sup> August 2017
- Appendix 6 – Messages of Support
- Appendix 7 – Plan showing location of Public Footpath
- Appendix 8 – Copy of TPO Guidance notes
- Appendix 9 - Photographs of trees from local vantage points
- Appendix 10 – TEMPO Assessment
- Appendix 11 – Copy of consent order dated 20 June 2017

**10. BACKGROUND PAPERS**

None

**11. KEY**

TPO - Tree Preservation Order

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