

APPENDIX (4)

AH_73LN | TPOob | PEB | 28.07.2017



TREE PRESERVATION ORDER OBJECTION

ON BEHALF OF

ACCESS HOMES LLP

RELATING TO

BROMSGROVE DISTRICT COUNCIL TREE PRESERVATION ORDER (11) 2017

AT

LAND AT SIDE AND REAR OF:
73 LINTHURST NEWTOWN, BLACKWELL

Prepared by: Paul Barton MSc, TechCert (ArborA), MArborA
Reference: AH_73LN



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1. INTRODUCTION

- 1.1 A Tree Preservation Order (TPO) has recently been served by Bromsgrove District Council.
- 1.2 This is the second TPO made on the land within one year; TPO (13) 2016 was previously made in August 2016 and confirmed in January 2017 but has been quashed by a consent order from the High Court following an application for Judicial Review by the landowner.
- 1.3 The title of the new TPO is:
- Bromsgrove District Council Tree Preservation Order (No 11) 2017, trees adjoining 73 Linthurst Newtown, Blackwell
- 1.4 The above address is hereafter referred to as 'the site'.
- 1.5 The TPO specifies the following in the schedule:
- Nineteen individual trees (T1 – T19)
 - Six groups of trees (G1 – G6)
 - One woodland (W1)
- 1.6 The stated reasons for serving the Order, as contained in the attached regulation 5 notice are as follows:
- "The trees provide special amenity value and the Tree Preservation Order is made in the interests of amenity"
- 1.7 The TPO was made on 4th July 2017 and takes provisional effect for six months from this date. After this time, if the TPO has not been formally confirmed by the Local Planning Authority (LPA) its provisional effect will lapse and a new Order must be served.
- 1.8 The deadline for objections to be received by the LPA in relation to this Order is stated as 4th August 2017.
- 1.9 I have been instructed to prepare this representation as part of an objection to the TPO by the Directors of Access Homes LLP.
- 1.10 The TPO, and this objection, must be considered on its own merits; it does not relate to a planning application for development but simply relates to the merits of trees and whether or not they are of sufficient value to warrant protection.
- 1.11 The objection is made in accordance with Regulation 6 of the Town and Country Planning (Tree Preservation) (England) Regulations 2012. It states the reasons for the objection and specifies the trees, groups of trees or woodlands in question.

2. GUIDANCE

2.1 Guidance is provided to Local Planning Authorities by the Department for Communities and Local Government through the online Planning Practice Guidance suite which replaced previous guidance contained in the document 'Tree Preservation Orders: A Guide to the Law and Good Practice' commonly referred to as 'the Blue Book'. This guidance sets out the grounds on which a TPO might be made. For clarity, the relevant elements of this guidance are reproduced below and the pertinent elements of the guidance in relation to this objection shown in bold:

2.2 Power to make a TPO:

Local planning authorities can make a Tree Preservation Order if it appears to them to be 'expedient in the interests of amenity to make provision for the preservation of trees or woodlands in their area'.

When deciding whether an Order is appropriate, authorities are advised to take into consideration what 'amenity' means in practice, what to take into account when assessing amenity value, what 'expedient' means in practice, what trees can be protected and how they can be identified.

'Amenity' is not defined in law, so authorities need to exercise judgment when deciding whether it is within their powers to make an Order.

Orders 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. **Before authorities make or confirm an Order they should be able to show that protection would bring a reasonable degree of public benefit in the present or future.**

When considering whether trees should be protected by an Order, authorities are advised to develop ways of assessing the amenity value of trees in a structured and consistent way, taking into account the following criteria:

Visibility

The extent to which the 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 normally be visible from a public place, such as a road or footpath, or accessible by the public.**

Individual, collective and wider impact

Public visibility alone will not be sufficient to warrant an Order. The authority is advised to also

assess the particular importance of an individual tree, of groups of trees or of 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.

Other factors

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 or response to climate change. **These factors alone would not warrant making an Order.**

Although some trees or woodlands may merit protection on amenity grounds, it may not be expedient to make them the subject of an Order. It may be expedient to make an Order if the authority believes there is a risk of trees being felled, pruned or damaged in ways which would have a significant impact on the amenity of the area.

3. GROUNDS FOR OBJECTION

3.1 The grounds for objection are as follows:

- a) The TPO cannot be justified on the grounds of preserving public amenity
- b) The schedule of trees is incorrectly written.

3.2 This objection relates to the following trees included in the order:

- T5 (Ash)
- T6 (Oak)
- T18 (Oak)
- T19 (Apple)
- G4 (1 x Pear, 4 x Apple)
- G5 (3 x Silver Birch)
- G6 (1 x Oak, 1 x Holly, 1 x Ash)
- W1 (Mixed species)

Objection relating to public visual amenity

3.3 In the LPA's reasons for making the TPO it is stated that:

"The trees provide special amenity value and the Tree Preservation Order is made in the interests of amenity".

3.4 This reason has been applied to all the trees that are the subject of the TPO. Whilst some of the trees that are present on the site are visible to the general public, notably those along the frontage to Linturst Newtown, many are not. It cannot be the case that trees have 'special amenity value' if they cannot be seen.

3.5 As noted above, the Planning Policy Guidance on the making of TPO's states:

'The trees, or at least part of them, should normally be visible from a public place, such as a road or footpath, or accessible by the public'.

3.6 I have requested a copy of the tree officer's assessment of the trees but have not received a reply. I understand that the council use an evaluation method called 'TEMPO' (Tree Evaluation Method for Preservation Orders) authored by Julian Forbes-Laird in 2006. The scoring system in this method is weighted to favour trees that have a high degree of visibility, as follows:

c) Relative public visibility & suitability for TPO	
<i>Consider realistic potential for future visibility with changed land use</i>	
5) Very large trees with some visibility, or prominent large trees	Highly suitable
4) Large trees, or medium trees clearly visible to the public	Suitable
3) Medium trees, or large trees with limited view only	Suitable
2) Young, small, or medium/large trees visible only with difficulty	Barely suitable
1) <u>Trees not visible to the public, regardless of size</u>	<u>Probably unsuitable</u>

3.7 The land covered by the Order adjoins the road Linthurst Newtown on the southeast side. This is the only road that provides an uninterrupted view of some trees within the site. It is accepted therefore that the row of trees along the roadside do have visual amenity as they are easily seen. The view from Foxes Close to the west gives visibility to the tops of some trees in the centre of the site.

3.8 The mature trees in the internal square shaped area immediately to the rear of the garden (G3 of the TPO) can be partially viewed, as the top of their crowns are visible over the roofs of adjacent houses.



Figure 1: snapshot of Google aerial photo showing the site in relation to local roads and footpaths. Photos taken from locations 1, 2, 3 and 4 are provided below to show the visibility in to the site. The blue circle represents the area of the site which cannot be viewed from any nearby public areas.



Photo 1: from location 1 on the railway bridge. The tops of G3 are the visible.



Photo 2: view from location 2. Hollies T13 & T14 in the foreground amongst overgrown Laurel. G3 is visible beyond the house to the right.



Photo 3: from location 3. Top of T1 visible behind garage.



Photo 4: Google streetview image from Foxes Close. The tops of trees within G3 are visible.

- 3.9 There are no public rights of way within the fields to the west, north or east of the site, so views of the trees at the top of the site are extremely restricted.
- 3.10 Due to the limited viewpoints of the site, the following trees cannot be seen, and therefore have no public visual amenity:
- T5 (Ash)
 - T6 (Oak)
 - T18 (Oak)
 - T19 (Apple)
 - G5 (3 x Silver Birch)
 - G6 (1 x Oak, 1 x Holly, 1 x Ash)
 - W1 (Mixed species)
- 3.11 In addition to the above, most of the trees within G4 (1 Pear and 4 Apple) cannot be seen; only the Pear tree at the southern end of the group is possibly visible. The planning guidance states that "the group category should be used to protect groups of trees where the individual category

would not be appropriate and the group's overall impact and quality merits protection". It is therefore unreasonable to protect five trees based on the public visibility of just one.

- 3.12 The guidance notes that accompany TEMPO do make provision for the possibility that changes in site use can affect the future potential for public visibility, for example where trees that are currently hidden from view are exposed following clearance of surrounding land.
- 3.13 Not only are these trees not currently visible, but the realistic potential for their visibility to increase is very low as the trees further down the site are protected from removal thereby providing a natural visual buffer separating the road and houses from the trees at the top (north) of the site.

Objection relating to incorrect TPO schedule

- 3.14 The schedule has been incorrectly written as it lists the six 'groups' of trees under the heading 'trees specified by reference to an area', instead of listing them under 'groups of trees'. Under the 'groups of trees' heading, the schedule states "none".
- 3.15 This error appears to be an administrative mistake. The Town and Country Planning (Tree Preservation) (England) Regulations 2012 state in para 3 (4) that "In the case of any discrepancy between the map contained in, or annexed to, an order and the specification contained in the Schedule to that order, the map shall prevail".
- 3.16 This point of objection is therefore a minor one, as it is still clear from the order which trees are to be protected. However, in the interests of serving a clear and unambiguous order, it would be preferable if the schedule were amended.

4. CONCLUSIONS

- 4.1 It is requested that the provisional TPO No 11 (2017) is modified to remove from it T5, T6, T18, T19, G4, G5, G6 and W1 for the reasons listed above, before confirming the order.
- 4.2 It is also requested that the TPO schedule is amended to place the 'groups' of trees in the correct section.

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28th July 2017