

CONFIRMATION OF TREE PRESERVATION ORDER (TPO)
1171 – LAND AT THE BRACKENS, LONDON ROAD, ASCOT, SL5 8BE - 2014
(Director of Environment, Culture & Communities)

1. PURPOSE OF DECISION

- 1.1 Under section 198 [201] and 203 of the Town and Country Planning Act 1990 as amended and in the Town and Country Planning (Tree Preservation) (England) Regulations 2012, the Council has made a Tree Preservation Order (TPO) to retain and protect trees that are assessed to be of public amenity value and were judged to be at expedient risk of removal or other adverse affect. Objections have been raised and they are the subject of this Committee report.

2. RECOMMENDATION

- 2.1. That the Committee approves the Confirmation of this Tree Preservation Order

3. ADVICE RECEIVED FROM STATUTORY AND OTHER OFFICERS

3.1. Borough Solicitor

3.1.1. Guidance on Tree Preservation Orders and their making and confirmation has been provided by the Department for Communities and Local Government (CLG) on their website as Planning Practice Guidance titled "Tree Preservation Orders and trees in conservation areas". That guidance indicates that in the Secretary of State's view TPO's should be used to protect selected trees and woodlands if their removal would have a significant impact on the local environment and it's enjoyment by the public. Local Planning Authorities should be able to show that a reasonable degree of public benefit would accrue before TPO's are made or confirmed.

3.1.2. The guidance advises that three factors in particular are of relevance, namely:-

- Visibility - the extent to which the tree can be seen by the public
- Individual impact -The Local Planning Authority should assess a tree's particular importance by reference to it's size and form, it's future potential as an amenity taking into account any special factors
- Wider impact - the significance of the tree in it's local surrounding should be assessed

3.2. Borough Treasurer

3.2.1. The Borough Treasurer has noted the report. There are no significant financial implications arising from the recommendation in this report.

3.3. Equalities Impact Assessment

3.3.1. Not applicable

3.4. Strategic Risk Management Issues

3.4.1. Not applicable

3.5. Other Officers

3.5.1. Head of Planning Development Management has noted the report.

4. BACKGROUND

- 4.1. Existing trees that is individuals, groups, areas and woodlands were assessed for their amenity impact to evaluate the suitability of trees for a TPO. This assessment is based on factors including: -
- Their health & condition
 - Their remaining longevity
 - Their relative public visibility
 - Specialist considerations such as 'veteran' status, historical interest etc.
 - The known (or perceived) 'threat' to their health & condition or existence
 - The impact of the trees on the landscape
 - Special factors such as proximity and orientation to the nearest habitable structure.
- 4.2. These factors follow criteria based on government guidance and 'best-practice' and the assessment system follows policy developed by the Tree Policy Review Group (2007). The assessment gives a value that informs the Tree Service in considering whether or not to make a TPO.
- 4.3. Once the new TPO is served, affected residents have 28 days in which to make representation to the Council. Some representations are letters of support whilst others request clarification, but more commonly they are objections to the making of the Order. Objections can be made on any grounds; if objections are duly made, the Local Planning Authority cannot confirm the TPO unless those objections have first been considered.

5. DETAILS OF OBJECTORS COMMENTS

- 5.1. There was one objection by Broad Oak Tree Consultants (See Appendix) on behalf of Rapleys Estate Agents.
- 5.2. The principal issues raised as part of the objection relate to: -
- The majority of the trees have no public visual amenity.
 - The Council has not provided justification for such a large TPO and have not defined the public amenity it affords.
 - The TPO unduly restricting the management and maintenance of the site, placing a financial burden on the owners.
 - Any appreciable tree-felling on the site would fall under the remit of the Forestry Commission as it would require a Felling License.
 - There are mistakes in the tree species identified in the Schedule.

6. CONSIDERATION OF ISSUES

- 6.1. The Brackens is located along the London Road in Ascot, close to the crossroads with Priory Road and Swinley Road. The site fronts the London Road to the North and is bounded to the West and South by land managed as plantation woodland by the

Forest Enterprise (commercial division of the Forestry Commission) and which contains the 'Lapland' site.

- 6.2. When the site was advertised for sale as a development opportunity, Ward Members, the Development Management Team, staff working on the site and professionals associated with its maintenance raised concerns about the potential risk to the extensive tree cover on this site as a result of change of ownership.
- 6.3. TPO 1171 was served on 4th. August 2014 and will expire on 4th. February 2015
- 6.4. The Governments advice on making TPO's acknowledges that there is no legal definition of 'amenity' and that a local authority should exercise judgement when deciding whether it is within their powers to make a TPO and that 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. Other advice is such that it may be expedient to make an Order if the authority believes there is a risk of trees being felled would have a significant impact on the amenity of the area. But it is not necessary for there to be immediate risk for there to be a need to protect trees. In some cases the authority may believe that certain trees are at risk as a result of development pressures and may consider where this is in the interests of amenity, that it is expedient to make an Order.
- 6.5. In respect of 6.4 above, the amenity assessment by the Tree Service identifies existing visual amenity for parts of the TPO (for example the London Road frontage) but also acknowledges the future potential as visual amenity in the event of an as of yet unidentified form of development. The form and extent of the TPO is supported by the considerations of the heritage value of a number of individual trees as well as wildlife and nature conservation value of the site (and adjoining environment) which the Council's Bio-Diversity officer advises that it has suitable habitat for various reptiles (and possibly Great Crested Newt as a result of the pond within the southern part of the site); is likely to be used by bats for foraging and that there are records of Nightjars in the adjoining forest plantation.
- 6.6. The land surrounding The Brackens, on which the Forestry Commission manages its forestry plantations, is freely accessible to the public who are able to see Groups and Woodlands identified in this TPO.
- 6.7. Unlike the surrounding plantations managed by the Forest Enterprise under formal management (i.e. a Dedication Scheme), the trees and woodlands within The Brackens are not under any formal management plan that the Council is aware of. As such the site-managers carry-out normal and routine maintenance of the trees to ensure that they are kept in safe condition and do not present a nuisance to occupiers of neighbours. The imposition of a TPO will not impede that maintenance regime, as pruning or felling of trees that are deemed to be unsafe or that are causing (for example) damage to property can be managed as exemptions from the requirement to make a routine application to the Council (which can take up to eight weeks to process). The TPO Regulations also allows for an application to be granted (subject to condition) that will enable a grant of permission for regular and routine maintenance of trees for a period of years, without the need to make routine applications.
- 6.8. Under the Forestry Act 1967, the felling of any appreciable volume of trees (5 cubic metres in any calendar quarter) would require a Felling License from the Forestry Commission. Although that legislation would be applicable to this site their legislation

was primarily created to prevent excessive loss of tree cover; whereas the Town & Country Planning Act and TPO Regulations is primarily concerned about the visual amenity of individual trees, groups and woodlands. To rely on the Forestry Act to ensure control of the quality of trees and landscape would not be appropriate as there are significant exemptions from the requirement for a Felling License, which would have an impact on the condition and number of trees within the site. For example exemptions such as "Lopping & Topping" and the felling of trees less than 8 centimetres in diameter (or 10 centimetres if thinning woodlands).

6.9. The discrepancies within the Order that relate to incorrect species being cited in the Schedule can be corrected on confirmation of the Order: -

'T8 Cypress' to be corrected to read 'T8 Western Red Cedar';
'T9 Oak' is unsustainable; remove from Schedule due to presence of decay;
'T10 Cypress' to be corrected to read 'T10 Western Red Cedar';
'Cypress' listed in Group 2 to be re-named 'Western Red Cedar';
'Oak x 12' in Group 3 to be corrected to read 'Oak x 3';
'Purple Beech x 4' in Group 4 to be corrected to read 'Purple Beech x 5'.
'Woodland 1'; the extent of this woodland to be modified to exclude a small number of fruit trees fronting the brick wall bordering London Road.

7. SUPPORTING PLANNING INFORMATION

7.1. The Brackens site is not within the 'Green Belt' but it is close to its edge (as defined by the Swinley Road). It is outside of a defined settlement and is not identified for residential development as part of the Site Allocations Local Plan.

7.2. The building is in commercial use and is currently for sale

7.3. There have been two pre-application enquiries in the last two years regarding re-use or re-development of the site.

8. CONCLUSION

8.1. The Council has followed due legislative process, procedure and policy. This report explains its position in respect of the reasons for the TPO and also addresses the specific issues raised.

End of Report

Contact for further information: -

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APPENDIX

- Letter of objection from Broadoak Tree Consultants;
- Copy of TPO 1171