

PLANNING COMMITTEE
25 February 2016

CONFIRMATION OF TREE PRESERVATION ORDER (TPO)
Land at and adjoining 50A Fernbank Road, Ascot, SL5 8HE – 2015

(Director of Environment, Culture & Communities)



1. PURPOSE OF DECISION

- 1.1 Under section 198 of the Town and Country Planning Act 1990, the Council has made a Tree Preservation Order (TPO) to retain and protect trees that are assessed to be of amenity value and were judged to be at expedient potential 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 is provided by the Department for Communities & Local Government through the National Planning Policy Framework 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 its enjoyment by the public. A Local Planning Authority 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 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 should 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, the authority 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.

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 has noted the report.

4. **BACKGROUND**

4.1. Existing trees, that is individuals, groups, areas and woodlands were viewed and assessed for their amenity impact to evaluate the suitability of trees for a TPO. This system is based on factors that assess: -

- 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. The TPO consists of:
- Group 1 = Cherry x1, Beech x2, Oak x9, Pine x3, Sweet Chestnut x2
Group 2 = Birch x1, Oak x1 (Twin-stem), Holly x1
- 4.4. 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 COMMENTS AND OBJECTIONS RECEIVED

- 5.1. The Council received one letter of support from 48 Fernbank Road in respect of the trees providing amenity and screening.
- 5.2. The Council received two letters (128 & 130 Blackmoor Wood) with comments and requesting clarification of whether specific trees were protected or not and conditions in respect of certain trees, should they remain protected.
- 5.3. The Council received an objection from the owner of 50A Fernbank Road with a number of issues.
- 5.4. The issues raised as part of the comments and objections to this particular TPO relate to:
- The maintenance implications caused by falling leaves and fruit on adjoining properties.
 - Concerns about the size of the tree extending over neighbouring gardens.
 - Concerns about shading and the subsequent loss of sunlight to gardens.
 - Concerns about branches falling into adjoining properties.
 - Challenging the amenity value of the tree.
 - The Council’s amenity assessment.
 - Access for emergency vehicles.
 - Damage to water supply pipes and sewers.
 - Incorrect service of the TPO document.

6. TREE SERVICE PROCEDURE

- 6.1. The Order document contains details of how a resident can comment or object to the TPO. In serving the Order, the Tree Service also includes advice and guidance in respect of the objector’s right to make an application to manage their tree (even if the

TPO has yet to be confirmed) and directs the objector to an application form and how to source Government advice on TPO procedures.

6.2. The correspondence (objections or comments) is reviewed in respect of Council policies and to address the issues raised, a report is compiled and subsequently brought before Committee.

6.3. In the case of multiple communications that raise similar points or issues, the report contains the Council's response to address the range of issues raised.

6.4. The Council's response to the objections include: -

- Falling debris from the tree (such as leaves, seed & fruit, twigs and small branches etc) is the natural consequence of tree growth. Whilst sympathising with the difficulty encountered in maintaining a property; the sort of debris described is not recognised in English Law as a 'legal nuisance, and the judiciary regard falling leaves; fruit etc. as 'incidental to nature'. In respect of the Sweet Chestnut overhanging 128 & 130 Blackmoor Wood; these trees are not part of the TPO and no permission is required from the Council for affected neighbours to prune back to boundary.
- The trees do present shade over the property at 50A Fernbank Road due to its aspect whereby the house and garden area are to the North-east of the trees and as such it is inevitable that shading will occur in the presence of trees. In spite of the shading not being a material consideration under the legislation, applications to maintain trees for this reason are regularly made. In such cases the Council makes a judgement and considers whether or not the proposed maintenance will have a detrimental effect on visual amenity and condition of the trees.
- The Council's amenity assessment is not a full & detailed tree-survey; and although now protected, this does not remove any legal responsibility from the tree-owner to ensure their safe condition. The Council advises that if the objector/tree-owner considers any of the trees to be in any way dangerous, hazardous or unsafe, that they seek independent professional advice. In any event, an application can be made to the Council at any time to maintain the trees to address any potential risk.
- The amenity assessment undertaken on the trees has been developed by the Council and is based on Central Government Guidelines, industry 'best practice' and the Council's own policy. It is not a de-facto amenity value of a tree, group or woodland as there is no quantitative and definitive measure of amenity value available; however, the assessment follows Government advice in having a system of amenity assessment. The trees are visible from Fernbank Road and Blackmoor Wood; although it is argued that only certain trees are identifiable, the Group designation was chosen as their impact on the landscape and visual amenity value is in their 'group' context given that individual trees have over the years grown together.
- Concern was raised that one tree (an Oak) within G2 was a liability as it is growing in a position and at an angle that it would put public safety at risk by preventing access to properties by emergency vehicles. The Fires Service has commented that under current building regulations the width and extent of the private road are sufficient to enable access for emergency vehicles to reach the properties with their equipment in the event of an incident.

- In respect of alleged damage to water pipes and sewers by tree-roots, no evidence was made available to the Council. If a resident believes they are experiencing problems with tree-roots damaging any structures on their property, they must provide supporting evidence in order for the Tree Service to re-assess the situation taking in to account that information. In any event, an application can be made to the Council at any time with supporting evidence.
- The legislation requires that a copy of the TPO be served on all owners of a property. The Tree Service initially served a copy of TPO 1196, only on Mr Gomes; who pointed out the error and subsequently on 2nd. October the Tree Service served a copy of the same TPO on both Mr & Mrs Gomes and extended the period for lodging an objection.

7. SUPPORTING PLANNING INFORMATION

In 1988 the trees were protected by 'TPN 3/88'.

The TPO document archives were located in a variety of locations throughout Council offices and storage facilities.

The master file-list of Tree Preservation Orders, which is a compilation of various available documents available at the time that file was created, indicated that TPN 3/88 was confirmed.

Subsequent to an enquiry by Mr Gomes in August 2015 a detailed research into the archives was carried-out and revealed that in fact TPN 3/88 had not been confirmed.

After an initial assessment, the Tree Service advised the Planning Authority to consider a Tree Preservation Order to retain protection of the trees.

The TPO was served on Mr Gomes on the 29th. September 2015 and re-served a few days later (on both Mr & Mrs Gomes) due to a technicality in the service procedure and the deadline for objections was duly extended.

8. CONCLUSION

- 8.1. The Council has followed due legislative process, procedure and policy and has stated the reasons for protecting the trees. The various objections and specific issues raised by correspondents have been addressed within this report.

End of Report

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