

PLANNING AND HIGHWAYS COMMITTEE – 3 OCTOBER 2022

REPORT OF THE EXECUTIVE DIRECTOR OF CITY DEVELOPMENT

TOWN AND COUNTRY PLANNING ACT 1990 – SECTIONS 198 AND 201

THE CITY OF SUNDERLAND TREE PRESERVATION ORDER (No.179) 2022 LAND AT OCEAN PARK ROAD, SUNDERLAND.

1. PURPOSE

To advise the Committee regarding the objections received in response to the making of an 'Area' Tree Preservation Order in respect of trees at Ocean Park Road, and to ask that the Committee to consider the objections that were duly made and the contents of this report; and indicate its support, or otherwise, to the view of the Executive Director of City Development that Provisional (Area) Tree Preservation Order (No.179) 2022 ("the TPO") at land at Ocean Park Road, Sunderland should be confirmed.

2. BACKGROUND

A TPO is a mechanism for securing the preservation of single or groups of trees of acknowledged amenity value and the Local Planning Authority (LPA) may make a TPO when it is believed that:

- the preservation of trees is desirable in the interests of amenity, and
- it is expedient to preserve the trees by making a TPO.

Policy NE3 of the Core Strategy and Development Plan (CSDP) seeks to conserve significant trees and woodlands. TPOs are particularly important in controlling the felling and pruning of trees or woodlands which make a significant contribution to the environment. New orders will continue to be made where trees of amenity value are at risk.

The provisional TPO, which is the subject of this report, was created following the construction and occupation of the western half of what is now the Ocean Park Road estate in Seaburn. The development is still under construction and follows a recent and involved planning history. The Officer response to the objections that were duly made, letter dated 2 September 2022 and attached to this report at Appendix 4, summarises this planning history, as well as the relevance of the trees to the Ocean Park Road development, in particular Reserved Matters approval ref. 19/01750/LR4.

Following the construction and now occupation of the western half of the Ocean Park Road estate, the remaining trees, which consist of Sycamore, Whitebeam, Cherry, Ash and Beech, are located within the western end of the rear gardens of the properties that occupy the western boundary of the new

build estate, as well as a privately managed area that is still within Avant Homes, as the Developer, landholding to the west of number 36 Ocean Park Road. The trees are considered to provide a valuable buffer between Ocean Park Road and the adjacent Seafields Estate, whilst providing privacy amenity and a level of maturity to the wider landscape setting.

As detailed in the 2 September letter (Appendix 4), the trees have been objectively assessed by the Council's Arboricultural Advisor. Using the standard 'Tree Evaluation Method for Preservation Orders' (TEMPO) method, which is a systemised and well-established tool for TPO suitability and is attached to this report marked as Appendix 2, the trees have been attributed a score of 14 with a lifespan of 20-40 years; thereby effectively demonstrating that a TPO is appropriate based on the statutory grounds as set out above.

Prior to the Order coming before Committee, Members may recall that a site visit to view the trees was undertaken on Friday 24 June 2022.

3. MAKING OF THE TREE PRESERVATION ORDER

Pursuant to the provisions of the Town and Country Planning Act 1990, the TPO was made on 6 April 2022.

A copy of the schedule, description of the trees and land affected by the TPO is attached, marked as Appendix 1.

All impacted parties within Ocean Park Road, as well as corresponding residents in Seafield who adjoin the boundary of the TPO, were notified via hand delivered letters on the 6 April 2022.

The statutory period for the receipt by the LPA of objections and representations to the TPO expired on 12 May 2022.

4. OBJECTIONS

In response to the serving of the TPO a total of 6 objections were duly made within the statutory period, including a collective objection signed by and submitted on behalf of residents from 13 properties. All the objections are from residents within Ocean Park Road. The objections are appended to this report at Appendix 3.

More recently (and after the expiry of the statutory consultation period), a total of 8 representations, including one from a Ward Cllr, have subsequently been received in support of the TPO. However, as those representations were received after the 12 May 2022 they cannot be considered to have been made in compliance with Regulation 6 of the Town and Country Planning (Tree Preservation) (England) Regulations 2012.

5. SUMMARY OF OBJECTIONS

In terms of the objections received they have been summarised as follows:

- The trees do not have significant amenity value – previous arboricultural reports have categorised the trees, when comprising part of the larger wooded area, as being category ‘C’ (*‘trees of low quality with an estimated remaining life expectancy of at least 10 years’*). Since then, the retained trees have been subjected to the stress and impact of construction site – what are the exceptional circumstances of now imposing the TPO?
- Disagree in terms of the visibility of the trees and question the Council’s view that they can be read alongside the trees in the wider area. Objectors believe there to be no connection either visually or geographically;
- An objector disagrees with the screening qualities of the trees;
- Covenant is already in place that requires homeowners to obtain permission from Avant Homes for the removal of any tree, but it allows residents to prune trees without incurring excessive and continual costs;
- Another objection highlights they were not informed at the point of purchasing the property that the trees had to remain in the garden;
- Concern that the Area TPO will impact the willingness of homeowners to plant trees in the future;
- Trees block out sunlight and look a mess;
- Homeowners should be at liberty to decide what happens in their garden;
- The TPO map is vague and there are no trees in one of the gardens adjacent to an objector.
- Objection also cite previous tree reports for the development that identified a certain number of trees to be retained but the homeowner has been left with more trees in their garden area;
- Reference is made to landscaping in the wider development, such as the Linear Park and additional tree planting which should meet the overall requirement for the desired public amenity within the development;
- References to maintenance and anti-social behaviour considerations that led to the trees being placed within the extended rear garden areas when considering the Reserved Matters and although no issue with that approach ‘per se’, it seems no consideration was given to future homeowners. The objection questions the feasibility of this and resultant expectation that residents must now maintain and manage tall (thin) trees with a great deal of cost and disruption;
- Recent storms and high winds and the concerns over the height of the trees and the objection does not accept the risk and responsibility particularly as, without the burden of the TPO, the homeowner can take measures to mitigate this issue for all concerned.

6. COUNCIL COMMENTS ON OBJECTIONS

In response to the objections questioning the significance and visibility of the trees, it is considered relevant to refer Members to the 2 September correspondence (Appendix 4), as this summarises the extensive and recent planning history at the site.

The correspondence highlights that the safeguarding of trees was debated by Members at the Committee meeting (9 March 2020) which approved Reserved Matters 19/01750/LR4. It also highlights that throughout the consideration of developing the site, including the Hybrid (16/02056/HY4) stage, the significance of the trees was integral to decision making and given the significance of the trees to that decision making, as well as their visibility and collective value to the wider area, a TPO should now be placed on them.

The possibility of a TPO, as well as a covenant was suggested as possible solutions during the consideration of Reserved Matters 19/01750/LR4. It was not considered appropriate at the time of considering the Reserved Matters to be definitive in terms of imposing a TPO as there were still successive stages to consider, not least the plotting and detailing of the rear western half of a crowded wooded and mounded area, whilst also understanding the implications of the remaining trees on the construction of the proposed development. In addition, as evidenced by due process and the fact that the TPO is now before Members, it was inappropriate to advise Members at the 9 March 2020 Committee that a TPO was the definitive solution.

Consequently, at a sufficiently advanced stage of the construction works and as highlighted earlier; a TEMPO assessment was undertaken of the retained trees that resulted in a score of 14 (Appendix 2). According to the TEMPO method a score of 12-15 '*Possibly merits TPO*', and to put this into context a score of 16 and above is categorised '*Definitely merits TPO*'. A score of 14 means that the "*...trees have qualified under all sections but have failed to do so convincingly. For these trees, the issue of applying a TPO is likely to devolve to other considerations, such as public pressure, resources and 'gut feeling'*".

With this scoring in mind and given the preceding planning stages that led to the approval and construction of the development and the significance attached to the retention of the trees, it was considered that a TPO was defensible.

In terms of the presence of the covenant and as again detailed in the 2 September correspondence (Appendix 4); the administration and controls afforded involves only the affected parties i.e., Avant Homes and the homeowners. Nevertheless, it is noted that the trees are protected to a degree and to this end the local MP has suggested possible solutions, which are:

1. TPO not confirmed and remain under covenant;
2. TPO confirmed but residents can prune the trees themselves;

3. TPO not confirmed but residents can plant a buffer between them and their neighbour's garden. Then once the new trees are high enough, carry out whatever maintenance is required on the original trees.

In terms of solutions 1 & 3 it is considered that they are largely similar given they effectively focus on the TPO not being confirmed but with alternative mitigating circumstances/ suggestions being offered by way of potential justification and compensation. In respect of solution 1 i.e., reliance on the covenant and as already highlighted, this is civil and involves only the affected parties. This affords the Council, as the LPA, with no direct influence on the long-term future of trees.

Regarding solution 2, this is not considered possible given Regulation 13 of the Town and Country Planning (Tree Preservation) (England) Regulations 2012, which prohibits, in part, the lopping of trees, which is considered to include pruning works. Consequently, as is the case with the existing provisional TPO, if the Order is confirmed any such works will require the formal approval of the LPA.

As per the reasoning for the covenant, this is also considered to extend to solution 3, particularly as the TPO extends up the entirety of the western boundary of the new build estate and includes numerous private residential gardens. It would require the collective and consistent efforts of numerous residents and, without the presence of a TPO, it is considered difficult to envisage how this could be successfully realised.

Members should also note that the TPO is an 'Area' Order, which is a way of protecting individual trees dispersed over an area. The area category is intended for short-term protection and, unlike a 'Woodland' Order only protects those trees standing at the time the Order was made, in this case on the 6 April 2022. Consequently, any subsequent tree planting voluntarily undertaken by residents of Ocean Park Road would not be subject to the TPO.

Authorities are advised to only use the Area category as a temporary measure until they can fully reassess and reclassify the trees in the area. Following the recent construction and completion of the western properties within Ocean Park Road and as the trees are now largely in private gardens, coupled with the practical implications of individually plotting all the trees given the number involved, it is considered that an Area TPO is most appropriate under the circumstances.

Crucially the TPO affords the remaining trees the opportunity of time to grow and re-establish. Thereafter, if considered appropriate and dependent on the success of the trees re-establishing themselves within their new surroundings, the Council, as the LPA, can then review and determine whether individual or group Orders, or not as the case may be, would be more appropriate.

In response to the assertions that new residents were not factored into the decision taking of the approvals that enabled the development of Ocean Park

Road, attention is drawn to the number of arboricultural reports that supported the consideration of each stage of the planning process; from the Hybrid 16/02056/HY4 to the Reserved Matters 19/01750/LR4 and then onto the subsequent successful discharge of condition 4 of that Reserved Matters.

It was Condition 4 that was imposed to realise the construction of the development and offer the possibility to consider the long-term future of the remainder of the former plantation woodland. At all stages Arboricultural Impact Assessments were required and submitted, and it was these aspects of the submission that demonstrated the suitability of the proposed development, both in respect of the proposed and existing residents.

Members may also wish to note that since the introduction of the TPO an application to fell a tree has been considered and approved under delegated powers, ref. 22/01549/TPA. It was agreed on the basis that the subject tree was leaning toward and crowding an existing apple tree, which had a noticeable impact on the growth of this better specimen. Crucially the subject tree to be felled was not considered to be a particularly good specimen and its removal was not thought to be unduly impactful on the wider, collective merit of the TPO.

In respect of those objections questioning the soundness of the TPO, Officers consider that it reasonably and appropriately defines the schedule and location of the trees. As previously highlighted, an Area TPO protects only those trees that existed at the time the Order was made and the concerns that property boundaries are not included or whether or not some garden area(s) contain trees is not considered to be requiring of an amendment. Critically, the extent of the area covered by the TPO is clearly defined by a scaled plan.

8. CONCLUSION

It is considered that in view of the significance of the trees to the decision-making that resulted in the development of the Ocean Park Road estate, and due to the visibility and collective value and impact of the trees when viewed from Seafields and the wider landscaped setting, the TPO should be confirmed.

The objections that have been received as duly made have been assessed and considered and it is recommended, in accordance with Regulation 7 of the Town and Country Planning (Tree Preservation) (England) Regulations 2012, that the Order be confirmed without modification.

8. RECOMMENDATION

It is recommended that the Committee considers the contents of this report and the objections received and indicates its support (or otherwise) to the view of the Executive Director of City Development that Tree Preservation

Order (No.179) 2022 at land at Ocean Park Road, Sunderland should be confirmed.

BACKGROUND PAPERS

Schedule, Description and Plan of Tree Preservation Order (No. 170)
(Appendix 1)

TEMPO Assessment (Appendix 2)

Letters of objection (Appendix 3)

2 September 2022 Council response to Objections (Appendix 4)

Peter McIntyre
Executive Director of City Development