

City Development
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Date: 2 September 2022

Our ref: Provisional TPO 179

Your ref:

This matter is being dealt with by: Mr Anthony Jukes, Development Control,
anthony.jukes@sunderland.gov.uk

Dear Sir,

**RE: PROVISIONAL AREA TREE PRESERVATION ORDER (TPO) 179 -
RESPONSE TO REPRESENTATIONS**

I refer to the provisional Area Tree Preservation Order (TPO) 179 at Ocean Park Road and in response to the issues raised by residents I wish to take the opportunity to comment as follows.

The objections received have been summarised as:

- The Local Planning Authority (LPA) has not presented a case to demonstrate that the trees in question provide a high level of amenity and therefore it has not been demonstrated that their loss would have a negative impact on the environment;
- It is considered that the amenity and or other impact of the linear group of trees in question is not “significant” and therefore the emergency/ temporary TPO should not be confirmed.

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Assessment of the objections

When deciding whether to protect trees local planning authorities can make an Order for the preservation of trees or woodlands in their area if it appears to them expedient in the interests of amenity.

- What does amenity mean in practice?

As 'amenity' is not defined in law 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 making or confirming an Order the local planning authority 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, considering the following criteria:

- Visibility

The extent to which the trees or woodlands can be seen by the public will inform an 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 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 where relevant.

Expediency and what it means in practice

Although some trees or woodlands may merit protection on amenity grounds it may not be expedient to make them the subject of an Order e.g., it is unlikely to be necessary to make an Order in respect of trees which are under good arboricultural or silvicultural management.

Conversely, it may be expedient to make an Order if an 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. It is not necessary for there to be immediate risk for the need for trees to be protected. In some cases, an authority may believe that certain trees are at risk because of development pressures and may consider, where this is in the interests of amenity, expedient to make an Order. Authorities can also consider other sources of risks to trees with significant amenity.

The Local Planning Authority's assessment of the trees at Ocean Park Road

The Local Planning Authority's (LPA) qualified Arboricultural Advisor assessed the amenity of the trees on-site using the 'TEMPO' method; a simple to use and interpret approach that is widely practiced in the Arboricultural industry.

TEMPO stands for 'Tree Evaluation Method for Preservation Orders' and is a field guide for decision making, providing a record of the systematic assessment undertaken. It is a 3-part system: Part 1 is the amenity assessment; Part 2 the expediency assessment; and Part 3 the decision guide. If the trees being assessed score 12 points or more then they should be considered for protection.

In the case of provisional Area TPO 179 the trees scored collectively 14 points, thereby demonstrating that the linear group of trees are worthy of protection. This was based on their condition, safe useful life potential, visibility in the landscape and finally, whether it was expedient to make the order. The TEMPO assessment is attached to this letter for reference.

It is noted that comments received to the service of the TPO have referred to the 'CAVAT' method, 'Capital Asset Value for Amenity Trees'. The CAVAT assessment is designed to determine and provide monetary/ compensatory value to the loss of trees and not a means within which to assess amenity value. Given that amenity is the deciding factor the CAVAT method is not used by the Council, as the LPA, when considering the making of a TPO.

In considering whether the Area TPO was appropriate due regard was given to the relevant guidance i.e., Tree Preservation Orders and trees in conservation areas - GOV.UK (www.gov.uk). This superseded the previous and withdrawn (7 March 2014) 'Tree Preservation Order: A Guide to the Law and Good Practice' cited in the objections.

Planning history

In terms of detailing the TEMPO assessment undertaken, it is also important to set out how the LPA arrived at the point of considering and imposing the provisional Order. In this respect and as noted in the objections received, Avant's new build housing estate, Ocean Park Road, forms part of the wider redevelopment of Seaburn, which has a recent and involved planning history.

In October 2017 the LPA approved Hybrid ref. 16/02056/HY4 for a large-scale, leisure led, mixed use development. The Hybrid 16/02056/HY4 approval permitted in outline the residential development of the former car park and open space areas that Ocean Park Road now occupies.

In approving Hybrid 16/02056/HY4, Condition 4 of that permission approved 'Regulatory Plan 06, Public Realm and Landscaping', along with a series of other Regulatory Plans. These approved Regulatory Plans defined the 'Parameters' within which future Reserved Matters submissions would then be considered and assessed. It was Regulatory Plan 06 that required the retention of the trees along the western boundary with the Seafields Estate.

Given the approved Parameters, Avant, when first submitting their Reserved Matters proposal, made under application ref. 19/01750/LR4, initially proposed a scheme that had the rear boundaries of the western Plots terminating at the eastern edge of what was to be the retained woodland area. However, due to anti-social considerations over having a

potentially and relatively inaccessible wooded area between the rear boundaries of two estates, coupled with the loss of further trees to facilitate an access path/ route for maintenance, ultimately resulted in the extension of the garden areas of those western Plots.

Following this adaptation and when deciding the Reserved Matters 19/01750/LR4 application, Members at the 9 March 2020 Planning & Highways East Committee meeting discussed the implications of this aspect of the development. As part of these discussions the potential for a TPO, as well as a covenant, were raised in response to the queries and concerns of Members about safeguarding the retained trees in the future.

Consequently, given the requirements of the Hybrid's Parameters as well as the safeguarding concerns of and debate by Members, Condition 4 was imposed on the approved 19/01750/LR4 development. It was this condition that was designed to not only facilitate the delivery of the development and ensure the retention of as many trees as possible but also, when discharged and implemented, form the consideration basis of whether a TPO would be appropriate. Condition 4 was successfully discharged via ref. 21/00845/DIS.

Lastly, during the making of the TPO the LPA was aware that Avant had placed a covenant on the trees, thereby affording a level of protection. Nevertheless, when considering the question as to why the Council would then consider imposing a TPO, it is important to note that a covenant is civil in nature and involve only the affected parties, in this instance Avant and the relevant homeowners. It affords the Council, as the LPA, no direct influence on the long-term future of the trees. Consequently, and being mindful to the planning history of this site, as summarised above, relying on the presence of the covenant was not considered to fully realise the decision-making of this on-going development.

Area Order 179

In terms of the Order that has been put in place it should be noted that as an Area Order it applies only to those trees present on the day it was confirmed, 6 April 2022. An Area Order has been chosen because of the trees collective rather than individual merit and because it is way of protecting trees dispersed over a wide area. It is a temporary measure, which will be reviewed periodically, and it affords the trees time to grow and provides the LPA a reasonable degree of control over any future tree works or removals as the new build development begins to relate to and homeowners cohabit the space with the remaining trees. Thereafter, if considered appropriate and dependent on the success and amenity of the trees, the Council, as the LPA, could then review and determine whether individual or group TPOs, or not as the case may be, would be more appropriate.

In terms of those comments made in respect of compensation the reader is directed to Regulation 24 of the Town and Country Planning (Tree Preservation) (England) Regulations 2012. In summary, compensation only applies following the decision of the Council in respect of works to protected trees made under application.

Conclusion

The trees that form a strategic screen between the new development and the existing residential properties are important and make a considerable and positive impact to the landscape. Best practice following the retention of trees during the construction process should be considered for TPO protection to safeguard their continued protection.

Confirmation of the Order does not prevent maintenance or remedial works, but it does afford the Council the ability to protect the trees if the proposed works are harmful or poor practice now and in the future.

Please also note that following the objections received the consideration over whether TPO 179 should be made permanent shall now appear before Members of Planning & Highways Committee. Given the meeting cycles it is envisaged that TPO 179 will appear before Committee at the public 3 October 2022 meeting.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'P. McIntyre', is written over a faint, light blue rectangular background.

Peter McIntyre
Executive Director City Development