

PLANNING AND HIGHWAYS COMMITTEE – 20TH JULY, 2010

REPORT OF THE DEPUTY CHIEF EXECUTIVE

TOWN AND COUNTRY PLANNING ACT 1990 – SECTIONS 198 AND 201

THE CITY OF SUNDERLAND TREE PRESERVATION ORDER (NO.166) AT LAND TO THE WEST OF IRENE AVENUE, JOAN AVENUE AND TARN DRIVE, SUNDERLAND, 2010.

1.BACKGROUND

- 1.1 A local planning authority may make a Tree Preservation Order TPO) when it is believed there is a risk of a tree being adversely affected in ways that would have a significant impact on the amenity of the area. The draft TPO, which is the subject of this report, was created further to a request from a local resident in direct response to an application for outline planning permission (ref. 08/01059/OUT) for the erection of two dwellings within the subject area of trees which was refused by the Council. Since it was considered that these trees were directly under threat, TPO 166 was initiated to secure the trees' long-term protection. A TPO allows the Authority to strictly control any removal or pruning of trees on the site.
- 1.2 The site on which the subject trees are located is situated within Leechmere Industrial Estate, as identified by the adopted Unitary Development Plan proposal's map, adjacent to the Estate's eastern boundary which adjoins a residential area. The substantial number and considerable density of trees which exist within the site, provide an effective 'buffer zone' which protects the amenities of residents of Irene Avenue, Joan Avenue and Tarn Drive by means of providing a visual screen and noise attenuation of the Industrial Estate, hereby separating typically non-compatible land uses. Cumulatively, the trees within the identified area are considered to make an important positive contribution to the visual amenities of the area.

2. MAKING OF THE TREE PRESERVATION ORDER

A Provisional Tree Preservation Order No. 166, was made on 11th February, 2010, under the provisions of Sections 198 and 201 of the Town and Country Planning Act 1990. Given the nature of the situation and the fact that the trees were at risk of being felled, it was considered that an Area Order should be made in order to give comprehensive protection.

The statutory objection period to the Provisional Order has now expired and two objections have been received in respect thereof.

A copy of the plan showing the location of the area of trees is attached marked as Appendix 1.

A copy of the Tree Preservation Order No.166, at Land to the West of Irene Avenue, Joan Avenue and Tarn Drive, Sunderland 2010 is attached marked as Appendix 2.

3. OBJECTION 1

An objection to the proposed Order has been received from Mr. K. McCririck, of 38 Joan Avenue, Sunderland.

4. REASON FOR OBJECTION

- 4.1. The trees fail to provide an effective barrier from the industrial estate because they drop their leaves in winter.
- 4.2. The trees do not provide noise reduction
- 4.3. The trees do not provide an important positive contribution to the visual amenities of the area.
- 4.4. The trees restrict light to his property, specifically the garden.
- 4.5. The trees cause moss build-up on paths in the garden, making them slippery and unsafe and cause a strong, damp smell .
- 4.6. The trees are too high.
- 4.7. The price of his property could be affected by the problems with the trees, as referred to above.

Copies of four letters from Mr. McCririck are attached marked as Appendix 3, 3a, 3b and 3c.

5. COMMENTS ON THE OBJECTION

- 5.1. It is acknowledged that the belt of trees protected by the proposed Order do not provide screening throughout the year, particularly during winter when the foliage of the trees is diminished. However, during summertime in particular, it is considered that they provide an effective visual screen of the Industrial Estate.
- 5.2. It is acknowledged that noise levels from the Industrial Estate are currently relatively low. The Local Planning Authority (LPA) are however limited in the control of operators within the Estate, provided that no change of use or physical development is proposed. As such, noise levels may become notably higher in future, which would pose a significantly higher degree of disturbance to neighbouring residents should the subject trees be removed or killed.
- 5.3. The trees are publicly visible and contribute significantly to the aesthetic, amenity and landscape value of the local area whilst providing screening from the adjacent Industrial Estate. Section 198(1) of the Town and Country Planning Act 1990 states that a TPO may be made 'if it appears to a LPA that it is expedient in the interests of amenity to make provision for the preservation of trees or woodland in their area'. The Act does not define amenity, nor does it prescribe the circumstances in which it is expedient in the interests of amenity to make a TPO. In the Secretary of State's view, a TPO should be used to protect selected trees and woodland if their removal would have a significant impact upon the local environment and its enjoyment by the

public. Local planning authorities should be able to show that a reasonable degree of public benefit would accrue before the TPO is made or confirmed. The trees, or at least part of them, should normally be visible from a public place, such as a road or footpath. Trees may be worthy of preservation for, amongst other reasons, their contribution to the landscape. Therefore, the legislation makes no distinction between species or size of trees. It may also be expedient to make a TPO if the LPA believe there is a risk of the trees being cut down or pruned in ways which would have a significant impact on the amenity of the area. It is not necessary for the risk to be immediate. In some cases the LPA may believe that certain trees are at risk generally from developmental pressures. The LPA may have some other reason to believe that trees are at risk; changes in property ownership, and intentions to fell trees are not always known in advance, and so the protection of selected trees by a precautionary TPO may sometimes be considered expedient, as in this case.

- 5.4. There is no automatic right to light.
- 5.5. Whilst the trees may be a contributing factor to the moss accumulation, there is no guarantee that the removal of the trees would prevent the problem of moss and damp issues. However, such concerns have been duly noted and, accordingly, the eastern boundary of the area covered by the proposed TPO has been amended to a distance of three metres from the boundaries of the adjacent dwellings in Irene Avenue, Joan Avenue and Tarn Drive. It is considered that such an arrangement, by allowing residents to prune overhanging branches of the trees closest to their houses without the need to apply to the Council, will not further restrict natural light into the curtilage of adjacent residential properties.
- 5.6. With regard to the maintenance and height of the trees, regardless of whether a TPO is made, the management of the trees remains the duty of the owner of the land upon which the trees are situated. The LPA will allow any works which are considered to be reasonable and necessary but, given that the strip of land adjacent to Mr. McCririck's property is not within Council ownership, the Council cannot be held responsible for the state of the land. Whereas a resident would normally have the right to cut back overhanging branches to the boundary line, in the case of protected trees subject to a TPO, consent for any works would have to be obtained from the LPA. Anyone can apply to undertake works to a protected tree, however any consent granted does not imply that consent would be forthcoming from the landowner. A neighbour may prune overhanging branches of protected trees back to the boundary line, but no further, providing consent has been obtained from the LPA. There is no fee incurred to submit an application for works to protected trees or a limit on applications made. The LPA would not unreasonably withhold consent for tree works which accord with good arboricultural practice or where there is a perceived risk that a tree is dead, dying or dangerous. Should consent be refused, an applicant has the right of appeal against the decision.
- 5.7. The possible effect of a town planning decision on the value of an adjacent property is not a material consideration in reaching that decision. Changes to residential amenity, however, which might

incidentally affect the value of properties are material considerations. Trees can make an important positive contribution to the amenity of a development and surrounding area.

A copy of the letter of reply from the Head of Planning and Environment is attached marked as Appendix 4.

6. OBJECTION 2

An objection to the proposed Order has been received from Mr. M. Strong, of 37 Irene Avenue, Sunderland.

7. REASON FOR OBJECTION

The trees are not maintained by the current owners and overshadow nearby properties. As indicated at 5.5 above the reduction in area will facilitate residents' pruning overhanging branches where necessary

A copy of the letter of objection from Mr. Strong is attached marked as Appendix 5.

8. COMMENTS ON THE OBJECTION

The responsibility for maintenance of the land on which the trees are situated and also for the trees rests with the landowner. Please refer to Section 5.6, above.

A copy of the letter of reply from the Head of Planning and Environment is attached marked as Appendix 6.

In conclusion it is considered that the objections have been fully addressed.

9. RECOMMENDATIONS

It must be noted that the proposed TPO has been made pursuant to the request of local residents in order to ensure that their amenity is protected from the adjacent industrial estate. In accordance with one of the reasons provided by the Council for refusing an application (ref. 08/01059/OUT) for residential development within part of the area in question, and reiterated by the Inspector at appeal, it is agreed that the trees within the site offer valuable amenity value to residents, in particular by providing a buffer from the adjacent industrial units. To this regard, these trees, collectively, provide significant visual screening of the industrial estate and can also be considered as providing effective noise abatement from potentially loud industrial processes.

The boundary of the area defining the extent of the TPO has been altered in light of objections to the order, in particular in response to issues relating to the management of the subject area, to allow such residents to freely maintain the land immediately adjacent to their properties without requiring formal consent from the Council. It is therefore considered that the concerns of all

residents, whether in favour or in opposition to the proposed TPO, have been satisfied.

Accordingly, 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 Deputy Chief Executive that Tree Preservation Order 166 at land West of Irene Avenue, Joan Avenue and Tarn Drive, Sunderland, 2010, be confirmed as amended?

BACKGROUND PAPERS

The Plan (Appendix 1)

Provisional Tree Preservation Order (No. 166) (Appendix 2)

Letters of objection from Mr. K. McCririck (Appendices 3, 3a, 3b and 3c).

Letter from Planning and Environment to Mr. McCririck addressing the objection (Appendix 4).

Letter of objection from Mr. N. Strong (appendix 5)

Letter from Planning and Environment to Mr. Strong addressing the objection (Appendix 6).

Janet Johnson
Deputy Chief Executive