



Forest Heath  
District Council

**DEV/FH/18/002**

# **Development Control Committee 3 January 2018**

## **Tree Preservation Order TPO/026(2017) – 77 Queensway Mildenhall**

<b>Date</b>	06.11.2017	<b>Expiry Date:</b>	06.05.2018
<b>Served:</b>			
<b>Case Officer:</b>	Sarah Drane	<b>Recommendation:</b>	Confirm
<b>Parish:</b>	Mildenhall	<b>Ward:</b>	Market

### **Synopsis:**

A Tree Preservation Order (TPO) was made on 1 tree on the land belonging to 77 Queensway, Mildenhall. The TPO was made on the 6<sup>th</sup> November 2017 and was served to protect 1 Walnut Tree. The TPO was made as the tree is a prominent feature in the vicinity and is of high amenity value particularly as it is one of only a few mature trees in the area.

An objection has been received from the owner of the tree. The reasons for the objection have been considered and are addressed within the report.

It is recommended that Members **CONFIRM** the TPO as detailed in this report.

### CONTACT CASE OFFICER:

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## **Commentary:**

1. The District Council's Standing Orders allow for the making of provisional Tree Preservation Orders by Officers, subject to reporting any representations relating to such action to the Development Control Committee.
2. A Tree Preservation Order was made on 6<sup>th</sup> November 2017 to protect a tree on the land belonging to 77 Queensway (Working paper 1).
3. The reason for the Tree Preservation Order was that:

*This is a mature tree which is situated in the rear garden of number 77 Queensway. The tree is a prominent feature in the vicinity and is of high amenity value particularly as it is one of only a few mature trees in the area. There is potential for the tree to become more important in light of potential development in the area. The tree can be viewed from the allotments and from Queensway.*

4. The tree is located in the garden, on the south east side of a detached property – 77 Queensway. Concern arose because of a proposal to remove the trees which have a high amenity value.
5. A representation has been made in relation to the Tree Preservation Order by the owner. The main reasons for the objection are as follows:
  - Duplication of TPO/014 (2017) which lapsed in August 2017.
  - The plan is not to scale and the Tree is closer to the property than the map suggests.
  - The tree could affect the property structure if not cut back according to the survey. "Shrubs and trees can be damaging to the fabric of the property so their growth needs to be restricted" the survey also states roots have appeared into the drains. The tree was not cut prior to 2017 for 15 years plus and 2 metres allowed by the Council is not sufficient.
  - The tree is not one of a few mature trees in the vicinity; 2 mature trees opposite as well as surrounding trees and shrubs.
  - The tree can only be seen from limited selected locations at the allotment with a keen eye due to other mature trees blocking the view.
  - The tree cannot be seen from the new development which was only notified in October, 8 months after the original TPO served. No other developments have been submitted for the public to view. So "potential developments" that have not been approved or submitted for public consultation should not be a deciding factor. If this is the case it would appear the Council knows of developments which are not transparent to the Public and could alter the Public's opinion.
  - Other mature trees in the area will be felled to make way for the Hub development (confirmed October). No explanations given why this Walnut tree is more of an amenity, where as the others are clearly

more mature and can currently be seen from a greater distance from the development site and along Queensway.

- No site visit, survey has been conducted in relation to TPO/026 (2017)
  - TPO/026(2017) Served within 24 hours due to complaint received on the 6th November against FHDC.
  - No comments have been raised by residents stating any amenity value.
  - TPO/026 (2017) Not required as the tree is in no danger - have previously offered to sign a unilateral agreement to that effect which was declined by the Planning Department.
  - The Council stated the original TPO was still in place when granting planning permission - abusing their power as an Authority.
6. Officers have considered the objection carefully along with the information submitted alongside the representation:
  7. This is a duplicate TPO which was served because TPO14(2017) had lapsed (was not confirmed within the 6 months). It was always the Council's intention to recommend that the TPO be confirmed, but due to an oversight this did not happen. The new TPO was therefore made for the same reasons as previously which is because the tree is located in a prominent position and is of high public visual amenity value.
  8. It is noted that the objector considers that the tree is located closer to the house than is shown on the plan. The purpose of the plan is to identify the tree that is protected and the plan is sufficient for that purpose.
  9. The content of the survey report provided by the objector is noted; the Council approved the TPO application (DC/17/1525/TPO - 2m crown reduction) that was submitted by the objector to reduce the tree by 2m. Any more work would be severe and would affect the amenity of the tree and potentially its future health.
  10. The two mature trees opposite no. 77 which are mentioned in the letter of objection are also protected by tree preservation orders. The reference to development in the reason to serve the TPO is made because there was an inquiry made as to whether the tree was protected. This was not by the current owner or a tree surgeon. The amenity value of the tree was assessed when the original TPO was made and this has not changed.
  11. The proposal to develop a public service hub to the south of this site has been approved and will lead to the loss of some trees, however, that loss will be fully mitigated (through new tree planting which will form part of a comprehensive soft landscaping scheme) as part of the development proposals.
  12. The walnut tree was visited when the original tree preservation order was made. The application to reduce the tree (DC/17/1525/TPO) was made by a qualified tree surgeon who confirmed, in section 8 of the application

form, that there were no issues associated with the condition of the tree and that the tree was not causing damage to the property. There were no reasons such as impact on amenity of the property stated on the application form that would suggest that further site visits were necessary.

13. The new TPO had to be served quickly once the Council was made aware that there was an issue with the first tree preservation order. This is because the Council was concerned that the tree would be reduced further or felled, and in fact the letter of objection states that the current owner would wish to reduce the tree more than the 2 meters which was permitted. It was therefore important to protect the tree to ensure any further works could be controlled.
14. A unilateral undertaking was offered by the owner as an alternative way to prevent the felling of the tree. However, a tree preservation order is the most appropriate way to protect a tree of amenity value. An application can then be made for any future works to that tree.
15. The tree preservation order was in place when the tree works application was registered (DC/17/1525/TPO) and consultation undertaken. The Council granted consent for the works that the objector applied for. Not bringing to the attention of the owner the fact that the original TPO had lapsed was an oversight. The principal concern has always been and continues to be the protection of the tree which is why a new TPO was made. So whilst the owner's concerns/objections are noted, there are no reasons why the TPO shouldn't be confirmed.

### **Finance/Budget/Resource Implications:**

16. Works to or removal of a tree or trees covered by a TPO will require the formal consent of the local planning authority before any work can be carried out. Currently all such applications are submitted to the local planning authority and do not attract a fee. The Council's Planning Services and Arboricultural Officers will deal with subsequent applications arising as a result of the TPO without any additional fee income. There may also be appeals should TPO consent be refused.
17. Should an application for works to a preserved tree (or for its removal) be refused, the local planning authority may in certain circumstances, be liable to pay compensation to the affected property owner, should the trees cause damage to a property. Such claims are, however, rare and, in this instance, considered unlikely given that the condition and location of the trees can be considered fully when deciding where to locate new dwellings and other facilities associated with any development.

### **Environmental Impact and Sustainability**

18. Removal of any trees, which are considered to be worthy of protection in the public interest, would detract from the visual amenity of the local

environment and in this case would effect the amenity of the future development.

### **Policy Compliance/Power**

19.The local planning authority has powers under the Town & Country Planning Act 1990 and the Town & Country Planning (Trees) Regulations to make a TPO if it appears expedient in the interests of amenity to do so.

20.The making of a TPO in this instance, is in line with the powers and policies of the Council.

### **Performance Management Implications**

21.The applications determined under the TPO provisions and any subsequent appeals are not currently the subject of any national or local performance indicators.

### **Legal Implications**

22.This provisional TPO is served on the owner and occupier of the land affected by the TPO, and also on owners and occupiers of adjoining land, who had a period within which to make objections or representations to the Order. The statutory consultation period expired on 4<sup>th</sup> December 2017.

### **Human Rights Act and Diversity Implications**

23.These matters have been assessed in relation to and are considered to comply with the requirements of the Human Rights Act 1998. In relation to Article 6, interested parties have been advised of the making of this provisional Tree Preservation Order and their views have been considered within this report. Any interference with Rights under Article 8 and Article 1 of the First Protocol are necessary in the public interest.

### **Crosscutting Implications**

24.None

### **Risk Assessment**

25.As set out above, the Council may, in certain circumstances, be required to pay compensation to owners of properties damaged by preserved trees, if the Council has refused consent to carry out works to the affected tree and such works may have prevented the damage. These claims, however, are rare.

### **Council Priorities**

26.The Council is keen to safeguard the built and natural environment.

### **Recommendation:**

27.It is recommended that the report be noted and Members **CONFIRM** the Tree Preservation Order as reported.

### **Documents Attached:**

Working Paper 1 – TPO including schedule and plan  
Working Paper 2 - Tempo Assessment

### **CONTACT OFFICER**

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