

Forest Heath District Council

**DEVELOPMENT
CONTROL
COMMITTEE**

7 OCTOBER 2015

DEV/FH/15/042

Report of the Head of Planning and Growth

TREE PRESERVATION ORDER TPO 2, 2015 – LAND OFF BURY ROAD AND GAZELEY ROAD, KENTFORD

Synopsis:

A provisional tree preservation order (TPO) was made on trees on land off Bury Road and Gazeley Road, Kentford, south of the Cock Inn, on 10 April 2015. The TPO was served to protect the mature trees on this site which can be seen from Bury Road and from Gazeley Road where they contribute to the amenity of the locality and the rural character of the village of Kentford. This TPO is required to prevent the precipitous removal of trees on this potential development site and protect retained trees into the future when, if the site is developed, they will increase in their public amenity value. The statutory consultation period for the TPO expired on 15 May 2015. Two representations have been received. Minor modifications are recommended to the plan and the schedule to resolve the concerns raised.

It is recommended that Members **confirm** the TPO with modifications.

Commentary:

1. The District Council's standing orders allow for the making of provisional Tree Preservation Orders by your Officers, subject to reporting such action at Planning Committee.
2. A tree preservation order was made on 10 April 2015 to protect trees on land off Bury Road and Gazeley Road, Kentford, south of the Cock Inn.
3. The reason for the tree preservation order was that:

The mature trees on this site can be seen from Bury Road and from Gazeley Road where they contribute to the amenity of the locality and the rural character of the village of Kentford. This TPO is required to prevent the precipitous removal of trees on this potential development

site and protect retained trees into the future when, if the site is developed, they will increase in their public amenity value.

4. The trees are located to the south of the public house on land which is being considered for development (planning application DC/14/2203/OUT). The concern arose because the initial proposals for development included the removal of many of the trees which if retained would enhance the development and provide an attractive setting for the new dwellings.
5. This tree preservation order (TPO2 2015) supplements an existing order (TPO1 1992) which protects three sycamore trees on this land
6. Three representations have been made in relation to the tree preservation order. Two of these have been made by agents on behalf of the owner of The South Lodge. The main areas of contention are that:
 - the use of a woodland designation (W1) was inappropriate and would restrict the reasonable management of garden land
 - the area designation (A2) is indiscriminate and includes trees that are not worthy of protection and have a low public amenity value.
7. The third representation has been made by the owner of St Davids. The main area of contention is that the protected trees which are located on the boundary of that property are in poor condition and present a threat to people and property at St Davids.
8. Officers have considered the objections to the order carefully along with the information which is available including that which was submitted as part of the current planning application.
9. Of primary concern is the evidence on the condition of the existing trees which have been protected; in particular those trees on the boundary of St Davids. There is sufficient information about those trees proposed for protection to the east and the south of this property which are included on the development site. These trees (T1, G2 and T9) are considered to be suitable for retention. The trees to the west of St Davids do not border this development site but form the boundary between St Davids and the Meddler Stud. It is recommended that these trees are removed from the tree preservation order and their protection is considered separately once an inspection of their condition has been made to inform their suitability for retention. It is recommended that the tree preservation order is modified to reduce the extent of area A1 (see working paper 3).
- 10 The criticism of the use of a 'woodland' tree preservation order (W1) is accepted. These trees are located within the domestic curtilage of The South Lodge which is managed as a garden. The trees could be effectively protected as a group and as such it is recommended that the tree preservation order is modified to rename 'W1' as 'G4' and identify

the trees to be protected in the schedule (working paper 2 and 3). The modification should also exclude garden trees such as T2 which is a young blue atlas cedar and a group of 5 young hazels which are located within the garden lawn. Consultation with the landowner has taken place to try to reach agreement on the trees to be included.

- 11 The trees included in Area 'A2' have also been reviewed in light of the detailed information available and the comment that some trees have been included that are not worthy of protection and have a low public amenity value. This is the group of trees which form the important backdrop to the public house and define the attractive open space which forms an important village amenity. These trees are clearly visible from Bury Road and assessed to be of high amenity value which would increase if the site were to be developed (see working paper 4). However it is agreed that some of the trees on the eastern edge of the site behind the existing bungalows are of a garden scale and value. In light of this it is recommended that the tree preservation order is modified so that area 'A2' is renamed as 'G3' and the extent of it modified to reflect the distribution of importance trees and identify the trees to be protected in the schedule (working paper 2 and 3).
- 12 The tree preservation order has not been made to prevent legitimate development of the site but to protect the site assets and to ensure the trees and woodland are properly considered as a material matter in any proposal for development.

Finance/Budget/Resource Implications:

- 13 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.
- 14 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 the health and location of the woodland.

Environmental Impact and Sustainability

- 15 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 particular the residents of Kentford. In this case the

biodiversity of the woodland may also be compromised should tree removal continue particularly if undertaken during the bird breeding season.

Policy Compliance/Power

16 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.

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

Performance Management Implications

18 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

19 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 15 May 2015.

Human Rights Act and Diversity Implications

20 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

21 None

Risk Assessment

22 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

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

Recommendation:

24 It is recommended that the report be noted and Members CONFIRM the Tree Preservation Order with modifications as Members see fit. The recommended modifications are shown on the revised plan and schedule (Working papers 2 and 3) and are as follows:

- **reduce the extent of area A1**
- **rename 'W1' as 'G4' and identify the trees to be protected**
- **exclude garden trees within the property of 'The South Lodge'.**
- **renamed 'A2' as 'G3', reduce the extent and identify the trees to be protected**

Documents Attached:

Working paper 1 – TPO plan showing location

Working paper 2 – Revised schedule

Working Paper 3 – Revised plan

Working Paper 4 – TEMPO Amenity assessment report

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