

DECISION ITEM

REPORT OF	MEETING	DATE	ITEM NO
DEVELOPMENT SERVICES DIRECTORATE	PLANNING COMMITTEE	17 JANUARY 2018	6
FYLDE COUNCIL TREE PRESERVATION ORDER 2017.14: LAND NORTH OF WEETON ROAD, WESHAM			

PUBLIC ITEM

This item is for consideration in the public part of the meeting.

SUMMARY

The Planning Committee are asked to confirm this Tree Preservation Order following consideration of the comments received during the consultation on the Order. The council's constitution requires that when an objection is received the decision whether to confirm the Order is to be made by the Planning Committee.

RECOMMENDATIONS

1. That the committee confirms the Tree Preservation Order so that it becomes permanently effective. If the Order is not confirmed within six months it 'lapses' and cannot be made to apply.

SUMMARY OF PREVIOUS DECISIONS

Not Applicable

CORPORATE PRIORITIES

Spending your money in the most efficient way to achieve excellent services (Value for Money)	✓
Delivering the services that customers expect of an excellent council (Clean and Green)	✓
Working with all partners (Vibrant Economy)	✓
To make sure Fylde continues to be one of the most desirable places to live (A Great Place to Live)	✓
Promoting Fylde as a great destination to visit (A Great Place to Visit)	✓

REPORT

1. Legislative background to tree protection.

1.1 Statutory Duty regarding Trees.

The Town and Country Planning Act 1990 prescribes a “*General duty of planning authorities as respects trees*”.

Section 197 defines a duty in respect of trees:

Planning permission to include appropriate provision for preservation and planting of trees.

It shall be the duty of the local planning authority—

(a) to ensure, whenever it is appropriate, that in granting planning permission for any development adequate provision is made, by the imposition of conditions, for the preservation or planting of trees; and

(b) to make such orders under section 198 as appear to the authority to be necessary in connection with the grant of such permission, whether for giving effect to such conditions or otherwise.

The council is therefore obliged by statutory legislation to consider the preservation of trees in planning applications and to use planning conditions to secure new tree planting in development.

1.2 Tree Preservation Orders.

Section 198 (1) of the TCPA 1990 empowers local planning authorities to make Tree Preservation Orders, (TPOs).

If it appears to a local planning authority that it is expedient in the interests of amenity to make provision for the preservation of trees or woodlands in their area, they may for that purpose make an order with respect to such trees, groups of trees or woodlands as may be specified in the order.

1.3 Changes to TPO procedures from 6th April 2012.

In 2012 the government introduced what it described as “*a consolidated and streamlined tree preservation order system.*” One of the notable changes was the removal of S201 of the Town and Country Planning Act. This meant that ALL tree preservation orders take immediate effect from the day the Order is made and no consultation is necessary.

2. Background to making the Tree Preservation Order.

2.1

The TPO came about following planning application 17/ 0568. Numerous trees across the site that have outward visual appeal were in poor condition when inspected properly so were omitted from the Order, but the better trees were identified for inclusion and a TPO was served to secure their retention and ongoing protection immediately and post-development.

2.2 Objection Period.

A statutory twenty –eight day objection period applies to new TPOs.

Owing to a clerical error, the TPO was later modified and re-issued with effect from 8th August, and in light of this the Tree Officer set a new objection deadline of 5th September 2017 to compensate for the modification to the Order.

2.2 Representations received.

The developer’s arboricultural consultants issued an objection, which takes the form of a written report of some technical content, on 4th September 2017.

3.0 Objection.

No challenge is made on the grounds of amenity, as it is common ground that the trees captured by the Order are the better ones on the site and offer visual amenity.

The objection is premised on a challenge to the expediency of the TPO and cites government guidance, the Town and Country Planning Act 1990 sections 197 and 198, and *British Standard BS5837:2012 – Trees in relation to design, demolition and construction – recommendations*, as technical support.

The length and content of this objection necessitates a synopsis rather than a complete exposition of it. The council's Tree Officer considers it wholly in error and premised upon a subjective interpretation of the documents to which it refers.

If members wish to read the full objection it is appended to this report.

3.1 Summary of Objection.

Expediency: the objector challenges the need for a tree preservation order because the trees are considered to be under responsible ownership and therefore no threat to them exists.

It is argued that the TPO cannot justifiably be made at outline stage and should only be served at the Reserved Matters level.

The consultant feels that *"It is not expedient to make an Order in respect of trees that are on land which is being developed or on which development is proposed because it constitutes a parallel consenting mechanism..."*

This statement seems to mean that the planning permission system alone should regulate tree protection and that the deployment of a proactive TPO is "redundant" because tree protection can be covered in planning permission - *"The Order would have no effect on the planning process and would neither add material weight to the retention of trees which have already been assessed as part of a submitted application..."*

BS5837:2012: This element of the objection report seems to posit the argument that because the trees have been assessed using this nationally- recognised industry standard the trees identified in it as indicated for retention and protection can be considered safeguarded without the requirement for a TPO and that therefore, the TPO is again redundant and ineffective.

It is argued that *"Any future planning application on the objection site would be required to comply with the recommendations of BS 5837 in terms of provision of information and can make no attempt to disguise the effect of the proposed development on trees."*

This seems to indicate that the council must take the findings of the BS5837:2012 survey as placing an obligation on the developer or landowner to abide by its recommendations.

Town and Country Planning Act 1990 sections 197/198: this section suggests that the Order is unnecessary owing to the trees being already a material consideration under S197, and alerts the council to the provisions of S197 which are interpreted by the objector as meaning that TPOs should only be used *when granting planning permission*.

It is also argued that the proper means to control future tree management is by planning condition rather than the TPO mechanism.

Finally, the objection concludes that,

"The making of an Order prejudices and obfuscates the planning process by introducing a material consideration after an outline planning application has been submitted and does not follow the Government's guidance which is that such Orders should be made in connection with the grant of development consent where necessary in addition to planning conditions. It is therefore improperly made and does not accord with best practice."

4. Response to the objection.

4.1 On the matter of expediency: since this term has not been defined as meaning a threat to the trees, it is acceptable, and legal, for a Local Planning Authority to make tree preservation orders on the precautionary principle and in fact a commitment to doing this will comprise one tenet of the council's emerging tree strategy.

The TPO system can be applied to trees that are not yet planted – ie the regulations allow an authority to TPO trees indicated on the landscaping scheme that accompanies a new development, which reinforces the point that expediency is not necessarily connected to the threat of felling or mismanagement, but is equally concerned with securing amenity.

The remark that this TPO *"obfuscates the planning process by introducing a material consideration after an outline planning application has been submitted..."* seems illogical, because, as the author has stated earlier in his objection, the trees are an immediate material consideration to the outline application by virtue of the fact that they are known to exist.

4.2 BS5837:2012: this document has no statutory weight and cannot be relied upon to secure the long-term presence of the trees included in a survey. It is thoroughly useful both to applicants and to the LPA, but it is non-binding on the developer and the results of such a survey can be set aside or even misapplied to identify trees that might negate the development. It is therefore not a substitute for a tree preservation order but serves well in helping the Tree Officer to identify which trees to protect with a timely TPO. Its real purpose is to set standards for the physical protection of trees during construction.

4.3 Planning matters – TCPA Sections 197 and 198, planning conditions etc: Legal provisions from sections 197 and 198 have been quoted.

Section 197 imposes a duty on councils to make provision for tree protection in planning applications if trees are material to such applications – ie if trees exist on the site. The wording does not state that TPOs should be made “when necessary” but when the LPA considers them necessary – a significant change of emphasis.

It is useful to quote the first provision of section 198 (1) in full:

If it appears to a local planning authority that it is expedient in the interests of amenity to make provision for the preservation of trees or woodlands in their area, they may for that purpose make an order with respect to such trees, groups of trees or woodlands as may be specified in the order.

Put simply, a Local Planning Authority is empowered by these terms to make TPOs outside of any planning application and has the power to do so proactively. To posit an argument that TPOs should be applied only during the grant of planning permission completely incorrect because it selectively ignores the provisions of section 198.

It should also be brought to members’ attention that the first paragraph of a tree preservation order cites S198 as the provision under which the Order is made and served.

The argument that the TPO should only be used when *granting planning permission* is therefore refuted. It has no merit whatever. Placing such an argument suggests ignorance of the TPO system.

4.4 Planning conditions (rather than TPOs) as means to secure long-term protection of trees: again, this is a wholly specious and ill-founded argument. Planning conditions are effective at securing tree retention and adequate physical protection during the development phase. They are not effective as means to control tree management and moreover, as they are ineffective after three years, they do nothing long-term to prevent trees being removed: once the condition period has elapsed the trees are unprotected and could be removed. In the meantime, the penalty structure associated with TPO’d trees is not available for contraventions of a planning condition, so the deterrent is absent.

The tree preservation order is the only means not only to secure the enduring presence of trees but to allow the council expert input to tree management decisions and secure replacement planting when felling is permitted.

5.0 Conclusion and Recommendation.

- The Tree Officer believes the TPO is correctly made and rather than being bad practice, as alleged in the conclusion to the objection, it rather represents high standards and a reasonable approach by the council.
- Every tenet of the objection report is rebutted.
- It was a non-contentious Order that did not restrict development and included trees that are shown for retention in the submitted masterplan for the proposal. If that plan is sincere then no transparent reason to oppose the Order exists.
- The purpose of the TPO is to secure the trees for what may be future occupants of the site as well as for nature and their functional benefits. The use of the planning permission system to do this in perpetuity is not practical, realistic or feasible.
- Members are requested to confirm the TPO without modification.

IMPLICATIONS	
Finance	There are no financial implications arising directly from this report.
Legal	The procedure for tree preservation orders is set out in the Town and Country Planning (Tree Preservation)(England) Regulations 2012. Under the regulations, a tree preservation order has provisional effect for six months after it is made, but then automatically lapses unless the council confirms it. The council must consider any objection before it can confirm the order.
Community Safety	None arising from this report.
Human Rights and Equalities	None arising from this report.
Sustainability and Environmental Impact	None arising from this report.
Health & Safety and Risk Management	None arising from this report.

LEAD AUTHOR	CONTACT DETAILS	DATE
Alan Wallbank	Alan.Wallbank@fylde.gov.uk	12 th December 2017

BACKGROUND PAPERS		
Name of document	Date	Where available for inspection
Report on objection to TPO 2017. 14	19 th October 2017	Fylde Council Offices.

Attached documents.

Appendix 1: objection report in full.

Attached documents.

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2.0 Formal Objection

2.1 The Fylde Borough Council (hereafter "The Council") made Tree Preservation Order *Tree Preservation Order 2017.14: Land North of Weeton Road, Wesham: Modified Order*. (hereafter "The Order") on 8th August 2017. Trees included in Schedule 1 of the Order are on land which The Applicants own (hereafter "the objection site").

2.2 In accordance with Regulation 6 of The Town and Country Planning (Tree reservation) (England) Regulations 2012 ("The Regulations"), this document is an objection by The Applicants to the making of the Order.

2.3 The grounds of objection are a lack of expedience. The grounds are detailed in the following section.

2.4 The objection is made in relation to all of the trees included in Schedule 1 of the Order.

3.0 Grounds of Objection

Trees to which this objection relates

3.1 The Order as made covers trees along western margins of two agricultural fields to the north of Weeton Road. Commercial and leisure development on land to the northeast of these fields (adjacent to the A585) is progressing.

3.2 This objection relates to all 6 individual trees and 2 groups of trees (one containing 6 trees and one containing 2 trees) cited in the Order and which are under the ownership (or shared ownership where trees are situated on boundaries) of Taylor Wimpey.

Context

3.3 An outline planning application for 190 dwellings with access from Weeton Road and all other matters reserved was submitted by Taylor Wimpey, Richard George Towers and Jane Marjorie Towers in July 2017 (Application ref: 17/05680). The application site includes all trees in respect of which the Order has been made. No removal of any trees was proposed as part of the application. The application has yet to be determined.

3.4 A Tree Survey and Constraints Report (TSCR) dated June 2017 (Report reference: 6304.001) was submitted to The Council in support of outline application 17/05680. The TSCR included a detailed inspection of all trees on or within influencing distance of the application site by a qualified Arboricultural Consultant; all of the trees in Schedule 1 of the Order were independently assessed and described by this report. The report was written in accordance with BS 5837:2012 Trees in relation to design, demolition and construction and represents the appropriate delivery of tree-related information into the planning system as recommended in Annex B.1 of BS5837:2012.

3.5 An Illustrative Masterplan (Drawing number: 613B-28), informed by the TSCR, was submitted in support of outline application 17/05680 establishing that all of the trees which would be protected by The Order can be retained within a development context.

Site history

3.6 Trees within the objection site are under responsible management. There is no threat to their continued presence and wellbeing that could reasonably be inferred from the current agricultural land use.

3.7 There is no history of irresponsible tree management on the objection site. It has been under stable ownership and management, which has allowed the existing trees of quality and amenity to develop.

3.8 In respect of development potential, the submission of independent tree survey and assessment supporting documents in line with national guidance demonstrates proper engagement with the planning system. Taylor Wimpey is a well-respected national housebuilder with a reputation for quality and an institutionalised regard for due process; there is no threat, perceived or otherwise, of tree removal that has not been duly authorised through the planning system.

Expedience

3.9 The Town and Country Planning Act 1990, Chapter 1, Section 198 states, '*If it appears to a local planning authority that it is expedient in the interests of amenity to make provision for the preservation of trees or*

woodlands in their area, they may for that purpose make an order with respect to such trees, groups of trees or woodlands as may be specified in the order.' The principal prerequisite for the making of a Tree Preservation Order is not solely the amenity of the trees, which is not disputed, but that doing so must be expedient.

3.10 The Government's planning practise guidance comments on the interpretation of 'expedience' as follows, '*It may be expedient to make an Order if the 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... ..In some cases the authority may believe that certain trees are at risk as a result of development pressures and may consider, where this is in the interests of amenity, that it is expedient to make an Order.*' In other words, expedience relates to an identified or perceived need for control where there would otherwise be none in respect of amenity assets. To be expedient, an order must be effective (i.e. it must make a practical difference) and it must be justifiable (i.e. it must respond to a real or perceived threat of tree works occurring).

3.11 There is no reasonable grounds for anticipating a threat to trees on the objection site on the basis of site history or current usage. The Applicants include a market leading developer with a strong and demonstrable track record of proper treatment of trees as a material consideration in the planning process. The Applicants do not pre-emptively remove trees on potential development sites for a range of reasons including reputational harm and possible risk to protected species. There is no reasonable grounds perceive threat to the trees and therefore the Order is not expedient.

3.12 A Tree Survey and Constraints Report (TSCR) dated June 2017 (Report reference: 6304.001) was submitted in support of an outline planning application for the objection site made in July 2017 by The Applicants (Application ref: 17/05680). The TSCR included all trees within The Order and they are therefore already referenced within publicly accessible planning documents. The Applicants have not sought to hide or distort the number or nature of trees on the site and has presented them as part of professional baseline assessments. The local authority has a means of controlling works to these trees via reserved matters or planning conditions and the Order would have no effect in terms of controlling or preventing such decision making or tree works thereafter.

3.13 It is not expedient to make an Order in respect of trees that are on land which is being developed or on which development is proposed because it constitutes a parallel consenting mechanism which, according to Tree Preservation Order Regulations 2012, Part 3, paragraph 14 would be rendered ineffective in the context of a planning permission. The Order would have no effect on the planning process and would neither add material weight to the retention of trees which have already been assessed as part of a submitted application, nor require any particular outcome in respect of proposals for pruning works to those trees in the context of development which is already under consideration. An Order which has no effect cannot be, or appear to be, expedient.

3.14 The determination of planning applications is the proper process by which all tree works (whether protected by Preservation Order or not) should be considered in the context of development. On the objection site, there is no threat to trees outside of the development context, and an Order is therefore not expedient. Trees that are in the development context have already been assessed and this information has been submitted to the council. The most appropriate means by which to control works to these trees is therefore the determination of planning applications which includes them.

The Planning Process

3.15 BS 5837:2012 provides specific recommendations and guidance on the relationship between trees, design, demolition and construction processes. Fundamentally, it requires an accurate presentation of the number and quality of trees affected by development. This forms the baseline against which effects should be assessed. In my experience, this guidance is universally applied by local planning authorities across England as the standard for the survey, valuation, impact assessment and protection of trees in relation to development. It reflects current best practice, scientific understanding of tree function and biology and new technologies that may allow successful integration of trees and new structures. BS 5837:2012 is cited by the Planning Portal, and local and national planning policy. No other recognised standards or published methods for the production of tree survey reports suitable to support a planning application made in the UK exist.

3.16 At paragraph 5.2.3, BS 5837 states that '*The following factors should also be taken into account during the design process: a) the presence of tree preservation orders, conservation areas or other regulatory protection*'.

3.17 Any future planning application on the objection site would be required to comply with the recommendations of BS 5837 in terms of provision of information and can make no attempt to disguise the effect of the proposed development on trees. The LPA can require such an assessment to be made independently by its application validation requirements. Any proposed tree works (including removal) should be weighed in the planning balance and considered as part of the application on its merits. In considering an application, the LPA has an opportunity for both the consideration of tree retention and the securing of mitigation in respect of approved tree removal. This is the same opportunity that is created by the making of a TPO, which is therefore in this regard, redundant. The making of an Order is therefore not expedient in respect of any current planning consent, application or any perceived threat to trees arising by future applications which may or may not arise.

3.18 At Annex B, BS 5837 states that '*Under the UK planning system, local authorities have a statutory duty to consider the protection and planting of trees when granting planning permission for proposed development. The potential effect of development on trees, whether statutorily protected (e.g. by a tree preservation order or by their inclusion within a conservation area) or not, is a material consideration that is taken into account in dealing with planning applications.*' All trees are a material consideration in the planning process and the creation of a TPO does nothing to add to or increase the protection of trees until after the development is complete or the application has been refused. Prior to this, an applicant is prevented from removing trees either by virtue of the granted consent and conditions, or by the prospect of necessitating a material amendment to the submitted application which would increase the liability to failure and cause delay and cost. This would not be in the interests of the landowner or developer and it is therefore not reasonable to make an Order on the grounds that this could occur.

3.19 The duty of the LPA to make provision for the protection of trees is established in The Town and Country Planning Act 1990, Chapter 1, Section 197; '*It shall be the duty of the local planning authority— (a) to ensure, whenever it is appropriate, that in granting planning permission for any development adequate provision is made, by the imposition of conditions, for the preservation or planting of trees; and (b) to make such orders under section 198 as appear to the authority to be necessary in connection with the grant of such permission, whether for giving effect to such conditions or otherwise.*' This establishes that planning conditions are the primary mechanism by which the preservation of trees should be secured in the context of a planning permission.

3.20 Section 197 establishes that Tree Preservation Orders should be made only where necessary and in connection with the grant of such permissions (i.e. they should not be made during the planning process but after consent is granted to control tree works outside of the development context). The Order does not meet either of these requirements

3.21 If the Council is intent on making an Order in response to the outline application, it would be common sense to make it at the time of Reserved Matters approvals at which point such an order could be duly considered in compliance with the law, guidance and regulations. At the granting of detailed planning consent, conditions can be made to secure tree protection. It may thereafter be considered expedient in the interests of amenity to make a Tree Preservation Order in respect of trees to secure their long-term protection. The current Order cannot and presents an obfuscation to the planning process. It also has little or no effect in terms of increasing or securing tree preservation at the present time.

Concluding Statement

3.22 The management of all trees on the objection site can be secured through the planning process, within which the trees have already been independently recorded and assessed in public documents and the Order therefore has no effect and is not expedient.

3.23 Notwithstanding and without prejudice to this objection, in order to avoid conflict with these trees, the Applicants have amended the location of their emergency access on their planning application drawings (see appendix 1)

3.24 All other trees within the objection site are under responsible management and there is no reasonable grounds for inferring a threat to their continued presence and condition. The Applicants include a national housebuilder with a strong reputation and arboricultural advisors; they do not present a risk of improper tree felling outside of the proper planning process. The Order is therefore unnecessary and is not expedient.

3.25 The order has limited practical effect in the context of a pending application and is therefore not expedient. The making of an Order prejudices and obfuscates the planning process by introducing a material consideration after an outline planning application has been submitted and does not follow the Government's guidance which is that such Orders should be made in connection with the grant of development consent where necessary in addition to planning conditions. It is therefore improperly made and does not accord with best practice.

3.26 In consideration of these points, an objection is made to the Order and a respectful request that it be revoked.