

Item 1

**Proposed Tree Preservation Order No 1, 2019 – Land Adjacent to 43 Clement Street, Kimberworth, Rotherham, S61 2JT**

**RECOMMENDATION:**

**That Members confirm the serving of Tree Preservation Order No. 1 2019 without modification with regard to the Woodland which is the subject of this report, situated on land adjacent to 43 Clement Street, Kimberworth, Rotherham under Section 198 and 201 of the Town and Country Planning Act 1990.**



**Background**

A planning application (ref: RB2018/1636) was received by the Council on 11 October 2018 seeking outline permission for the erection of 8 dwellinghouses with all matters reserved.

The site consists of 45 elements of woody vegetation, comprising of 40 individual trees and 5 groups of trees or shrubs / hedge groups.

The supplied tree report with the application details 10 category B trees that should be retained, where possible, as part of the finished scheme. The indicative site layout plan submitted shows that all but 7 trees would be retained – a loss of at least 43 trees.

The Council's Tree Service Manager has stated that the woodland provides a good level of amenity to the local area and whilst it is in need of some management its structure is good. In addition, the trees should be judged as a collective rather than just individually and the loss of the woodland therefore will be a great loss to the area.

It is noted that the indicative layout has tried to retain the best structured trees, but the removal of the woodland will remove more than just trees, it will remove habitat and niches that do not exist in individual trees. Accordingly, the Tree Services Manager has recommended that the whole site be covered by a Woodland TPO and the grounds for making the Order are as follows:

#### Amenity

- The trees concerned provide a valuable and important amenity to the area.
- The trees are mature in age and outwardly appear in reasonable to good condition with reasonable to good future prospects.
- The trees are considered to be a suitable species in relation to their setting and contribute to the leafy character of Kimberworth.
- The trees are likely to provide associated wildlife and environmental benefits.

#### Expediency

- The Council received a development application, which describes that all trees on site will be removed to facilitate the building of homes, with a less than adequate landscaping scheme proposed to mitigate the loss. It is therefore expedient that these trees are protected.

The government's advice in the National Planning Practice Guidance (NPPG) states that,

*“When deciding whether an Order is appropriate, authorities are advised to take into consideration,*

- *what ‘amenity’ means in practice*
- *what to take into account when assessing amenity value*
- *what ‘expedient’ means in practice*
- *what trees can be protected and*
- *how they can be identified*

*When granting planning permission authorities have a duty to ensure, whenever appropriate, that planning conditions are used to provide for tree preservation and planting. Orders should be made in respect of trees where it appears necessary in connection with the grant of permission”.*

## **Objections**

Objections were subsequently received from the applicant.

Objections raised are on the following grounds –

- The grounds for the TPO are based on judgement rather than evidence
- Wildlife and environment
- Low level of visual amenity
- No public access
- Not in a conservation area
- Evidence of fly-tipping
- Lack of expediency
- The TPO will stop development of the site.

## **Comments from Tree Service Manager**

The Tree Service Manager has considered the objections raised and has commented as follows:

### The grounds for the TPO are based on judgement rather than evidence

The creation of the TPO was made after a site visit by a professionally trained arboriculturist and following a review of the objectors supplied tree report. The Objector's objection is based around the terminology used in the reason for making the TPO, namely: “outwardly appear”, “considered to be”, “are likely to”.

Such wording is used as the tree elements being discussed either cannot be confirmed with 100% certainty or are based on expert judgement and experience. The full sentences they relate to are either dealing with:

- The full tree's health and not just what is visible during a Visual Tree Assessment (VTA) as used in the applicant's tree report.

It is not possible without extensive invasive investigation to give a full health assessment of the trees as much of their structure is either below ground or covered by ivy.

Such a level of investigation is not needed to justify a TPO.

- The species mix of the woodland being appropriate for the long-term health and structure of the woodland. Whilst some species are less than ideal they could be managed out without negatively affecting the structure of the woodland.
- The future health and appearance of the woodland, which of course cannot be assessed with 100% certainty.

### Wildlife and environment

The supplied ecology report confirms that there are no protected species identified in the woodland, however it also confirms that it is likely used on a transitory basis by a range of birds and animals.

### Low level of visual amenity

Government guidance for the visibility of protected trees is:

#### *“Visibility*

*The extent to which the trees or woodlands can be seen by the public will inform the 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.”*

<https://www.gov.uk/guidance/tree-preservation-orders-and-trees-in-conservation-areas#making-tree-preservation-orders>

Therefore there is no definite requirement for the trees to be fully visible; however the woodland is clearly visible from Clement Street.

The woodland was assessed using the nationally recognised TEMPO assessment form which assessed the woodland as “Medium or large trees with limited visibility”. This along with all the other factors in the TEMPO assessment gave a score of 14, with 12 being the minimum recommended score for protecting with a TPO.

### No public access

There is no requirement in the TPO legislation for protected trees to be publicly accessible. Such a requirement would make the majority of trees immune from protection

### Not in a conservation area

There is no requirement in the TPO legislation that restricts the making of TPOs to trees located in conservation areas. Many excellent trees and woodlands, worthy of protection, exist outside of conservation areas.

### Evidence of fly tipping

The presence of fly tipping on site is a management and neighbour issue for the land owner and not a reason to not protect the trees in the woodland.

### Lack of expediency

A development application (RB2018/1636) was received appearing to detail the intent to remove the whole woodland (possibly retaining 4 trees, though the plans did not confirm this) in order to build 8 new houses at the end of Clement Street.

At this time none of the trees on site were covered by either a TPO or are within a Conservation Area and as such were not protected. The owner could carry out whatever works they chose, including the removal of the whole woodland.

The Tree Service in discussion with the Planning Service agreed that it would be appropriate to place the trees under the protection of a Tree Preservation Order to ensure they would not be removed before the determination of the planning application for residential development.

As the planning application shows that there is the intention to remove the woodland to facilitate the development the TPO is considered to be expedient. Without it, the trees, the habitat and their associated benefits could be removed without consultation with the Council.

The following guidance details what expedient may mean in the making of TPOs:

*“What does ‘expedient’ mean 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. For example, it is unlikely to be necessary to make an Order in respect of trees which are under good arboricultural or silvicultural management.*

*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. But it is not necessary for there to be immediate risk for there to be a need to protect trees. **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.** Authorities can also consider other sources of risks to trees with significant amenity value. For example, changes in property ownership and intentions to fell trees are not always known in advance, so it may sometimes be appropriate to proactively make Orders as a precaution.”*

<https://www.gov.uk/guidance/tree-preservation-orders-and-trees-in-conservation-areas#making-tree-preservation-orders>

The TPO will stop the development of the site

The TPO legislation is not intended to be used as a block against appropriate development, indeed where planning permission has been granted and the implementation of that permission requires tree works to take place (including tree removals), then the planning permission over-rides the TPO. This is confirmed in Government Guidance:

*“Is there an exception for tree work relating to planning permission and permitted development?”*

*The authority’s consent is not required for carrying out work on trees subject to an Order so far as such work is necessary to implement a full planning permission. For example, the Order is overridden if a tree has to be removed to make way for a new building for which full planning permission has been granted. Conditions or information attached to the permission may clarify what work is exempt.*

*However, the authority’s consent is required for work on trees subject to an Order if:*

- *development under a planning permission has not been commenced within the relevant time limit (ie the permission has ‘expired’);*
- *only outline planning permission has been granted; and*
- *it is not necessary to carry out works on protected trees in order to implement a full planning permission.*

*The authority’s consent is also required, for example, for work on trees protected by an Order that is necessary to implement permitted development rights under the Town and Country Planning (General Permitted Development) Order 2015.”*

<https://www.gov.uk/guidance/tree-preservation-orders-and-trees-in-conservation-areas#making-tree-preservation-orders>

The initial intention of this TPO is to protect the trees whilst the planning application is being assessed so that they are not removed prematurely and also to highlight the importance of the woodland as an important asset to the area and its many residents.

If a development proposal for the site can show that it will replace the lost trees and habitat and also be in line with the Government’s proposals for sustainable development as described in the National Planning Policy Framework and the 25 Year Environment Plan (both of which describes the need to provide net gains in biodiversity), then a planning consent for development could be supported.

The current proposal however will see the removal of approximately 33 trees with only 4 trees proposed as replacement. In addition to this the remaining and new trees on site will no longer be located in woodland and the better growing environment and the myriad of habitats that come with the woodland but in a more ecologically sterile environment of front and rear gardens.

## **Conclusion**

The trees on site are good quality trees that provide an excellent level of amenity to the local area. They are likely to be capable of providing at least this level of amenity for the next 4 decades, though likely more as they grow. The current development proposal will see the decimation of the woodland that will not be replaced with the current poor replacement tree planting proposal, which will result in just a quarter of

the current tree numbers remaining on site along with a massive reduction in habitat for wildlife.

It is therefore considered that the objections to the Order have been carefully considered and that the Order has been made in accordance with Government guidelines. In this instance, it is recommended that the Order is confirmed without modification.