



Horsham
District
Council

PLANNING COMMITTEE REPORT

TO: Planning Committee South
BY: Head of Development
DATE: 20th August, 2019
SITE: Land North of Sandy Lane, Henfield.
WARD: Henfield.
APPLICATION: Tree Preservation Order No. 1517.

REASON FOR INCLUSION ON AGENDA: Objection to a tree preservation order.

RECOMMENDATION: To confirm Tree Preservation Order 1517 as served.

1. THE PURPOSE OF THIS REPORT

To consider whether Tree Preservation Order 1517 should be confirmed as served.

DESCRIPTION OF THE ORDER

- 1.1 Provisional Tree Preservation Order 1517, Land North of Sandy Lane, Henfield, was served on the 5th March 2019 on seven oak trees under the provisions of the **Town and Country Planning (Tree Preservation) (England) Regulations (2012)**. Under these Regulations, the trees included within the order benefited from immediate protection.
- 1.2 The statutory consultation period for the receipt of representations has now expired, enabling the order to be confirmed.

DESCRIPTION OF THE SITE

- 1.3 The trees are sited along the southern and western peripheries of the agricultural field to the south of Dropping Holms and Chanctonbury View in the village of Henfield.

2. INTRODUCTION

STATUTORY BACKGROUND

- 2.1 Section 198(1) of the **Town & Country Planning Act 1990** places an obligation on local planning authorities to make a TPO if it appears to them to be “*expedient in the interests of amenity to make provision for the preservation of trees or woodlands in their area*”.

PLANNING HISTORY

- 2.2 On 16th November 2018 an application was received for outline planning permission for the erection of 42 dwellings on the site, all matters reserved save for access (ref: DC/18/2463). This application was refused on 15th February 2019, and is presently subject to appeal.

3. OUTCOME OF CONSULTATIONS

PUBLIC CONSULTATIONS

- 3.1 A letter of **objection** to the order has been received from an agent representing the owners of the plot of land to the west of the site. The grounds stated in the objection are:

- That the trees do not offer the level of amenity value requisite to warrant their protection under a TPO, because:
 - None of the trees are in particularly visible or prominent areas. Specifically, the only property to have any real views of trees T4, T5 and T6 is the rear of Rushmore (*sic*) Nursery (i.e from the tennis court).
 - The trees would appear not to have any particular historic or cultural value, or be rare.
 - While the trees form part of the wooded landscape, they are not in and of themselves a defining characteristic of the landscape. There is nothing de facto of these specific trees which contributes to the sense of the landscape (c.f. in particular T1, which is a tree simply growing out of the banking of the adjoining road).
 - The trees would not appear to be of any especial size or age that would warrant this level of protection.
- That the Council has not acted in a fair and consistent way in selecting these trees for protection under S.198(1) of the Town & Country Planning Act 1990 in that:
 - The TPO has clearly been made as a reaction to the planning permission sought for the land in which the trees are sited;
 - In regard to this, the Council has acted in an unduly controlling way in attempting to forestall or manipulate future development plans.
- That there is no pressing need for the TPO to have been made, as the report from the Council's Arboricultural Officer in regard to the extant planning application on the site registered no objection on tree grounds.
- That the decision to protect the trees has been taken in an inconsistent way in conflict with the provisions of the 1990 Act in that it has been made without recourse to considering the other trees in the locality.

- 3.2 Fifteen letters of **support** for the order have been received. Comments made refer to the following:
- The trees are mature specimens in good order;
 - They have high amenity value in the landscape from many vantage points in the village, being silhouetted against the backdrop of the South Downs and Chanctonbury Ring;
 - Being positioned closely proximate to two well-used public footpaths in the area, they are readily accessible to view up close;
 - They contribute to the historic setting of the southern part of the village, being individually noted on early editions of the Ordnance Survey;
 - They mark the transition between the settlement of Henfield and the Adur flood plain;
 - They represent an important wildlife habitat, and contribute to the biodiversity of the area;
 - They assist with the drainage in the locality.

4. **HOW THE PROPOSED COURSE OF ACTION WILL PROMOTE HUMAN RIGHTS**

Article 8 (Right to respect of a Private and Family Life) of the Human Rights Act 1998 is relevant to this application. Human rights issues form part of the assessment below.

5. **ASSESSMENT**

- 5.1 The trees the subject of this report are all oaks, large specimens either in semi-maturity or close to maturity. Using the analysis tool set out under **BS 5837 'Trees in relation to design, demolition, and construction - Recommendations'** (2012) three classify as category 'A' trees, four as category 'B'. The stoutest reaches to 16m in height, the tallest to 25m (82 feet).
- 5.2 All of these oaks are the dominant specimens within the hedgerows around the southern and western boundaries of the site, boundaries that have clearly been present for centuries. Sandy Lane, forking westwards off Nep Town Road atop Windmill Hill, winds its way downhill to the south-western corner of the site, close to Rushmead Nursery, where it adjoins the old trackway to the east of the old railway line (now the popular Downs Link footway) northwards to link up with Old Station Road, running along the western boundary of the field.
- 5.3 The presence of these trackways is clearly indicated on the 1876 edition of the Ordnance Survey – as are the trees the subject of this report. In the 143 years since, much foliage has grown up around the trees, and, particularly along the western boundary, this foliage has the form of an unmanaged hedgerow, the trees constituting easily the largest and dominant growth. Given the topography of the locality, the field falling on a moderately steep gradient to its foot, to the west, these tall trees are prominent on the skyline when viewed – as they can be – from a wide area of the village to the north.
- 5.4 Given the extent of the area that these trees can be viewed from, standing out in silhouette against the backdrop of the Adur River valley and the South Downs, as well as their proximity to well-used public footpaths in the locality, it is considered that

they have high amenity value, making a very positive contribution to this area of the village. As large examples of a tree species indigenous, dominant, and central to the wooded character of the local landscape, they add to its definition and maintain a link with the landform and character of a more rural past, having both historic and cultural value; they also provide a significant wildlife habitat as well as, being part of an old hedgerow line, a connectivity as part of a wildlife corridor, of importance to the biodiversity of the area. In terms of their suitability for formal protection under TPO, they appear to readily meet the criteria in terms of visibility as well as individual, collective and wider impact – as required under the regulations.

- 5.5 The Council initiated the TPO in response to the proposed development scheme within the field; indeed, the citation supporting the making of the order states that the trees “*may come under threat of removal as a result of development plans in the locality*”. It has been pointed out by the objector that no objection on tree grounds was raised against the planning application for residential development under DC/18/2463; however, the lack of objection refers solely to the plans submitted, which are outline only. Subsequent applications might indicate a layout, for example, that would place the retention of the trees under new threat. This action is accordingly consistent with the Council’s statutory duty to make new TPO’s where considered “*expedient in the interests of amenity*” under S.198(1) of the Town & Country Planning Act 1990, including the making of orders on a precautionary basis. The purport that there was no pressing need to make the TPO, and hence now no need for it to be made permanent, is accordingly rejected.
- 5.6 It is contended also that the Council “*is acting in an unduly controlling way in attempting to forestall or manipulate future development plans*”, presumably either in regard to the field in question or the plot of land to the west of the site. However, all trees are material considerations in the planning process, whether or not they are statutorily protected; and moreover the granting of planning permission legally overrides a TPO under S.14 (1)(a)(vi) of the Town & Country Planning (Tree Preservation) (England) Regulations (2012). Hence it cannot be held that the serving of any TPO can be interpreted as an attempt to forestall or manipulate possible future development plans.
- 5.7 The claim that the trees have been protected without recourse to considering the value of the other trees in the locality is rejected; the chosen specimens were selected specifically on account of their superiority – in amenity terms – over the various other trees around the periphery of the site which, whilst clearly contributing to the character of the area and providing an excellent wildlife habitat, were not considered to meet the criteria for formal protection.

6. **RECOMMENDATIONS**

It is recommended that Tree Preservation Order 1517, Land North of Sandy Lane, Henfield, is confirmed as served.

Background Papers:

- Tree Preservation Order: 1517.

Contact Officer: **Will Jones**.