

KIRKLEES METROPOLITAN COUNCIL

PLANNING SERVICES

REPORT TO PLANNING SUB-COMMITTEE (HUDDERSFIELD AREA) ON - THURSDAY 13TH APRIL 2006 - STATUS: PUBLIC

WARDS AFFECTED: Ashbrow

TITLE: Tree Preservation Order 7, 2005: 1 Southlands Drive, Fixby, Huddersfield.

WHY IS IT COMING HERE?

For Members to authorise the making of a Tree Preservation Order under Section 198 and 201 of the Town & Country Planning Act 1990. And to revoke Tree Preservation Order 25/1998.

IS THIS AN URGENT ACTION APPROVED BY THE CHAIR OF SCRUTINY?

No.

Background

- Tree Preservation Order 7/2005 was made provisionally by the Council on 12th December 2005. It relates to an area of land adjacent to Number 1 Southlands Drive, Fixby. This site is identified on the plan attached to the Order.
- The majority of trees on the site are already protected under TPO 25, 1998 which currently remains in force in conjunction with TPO 7/2005. If TPO 7/2005 is confirmed, TPO 25 1998 will be revoked.
- The exception is two newly planted Hornbeams which are identified as T15 and T16 in TPO 7/2005.
- The new preservation order will provide protection for the already protected sycamores as well as the two newly planted Hornbeams T15 and T16 which are replacements for two previously removed mature sycamores (which were known as T15 and T16 in TPO 25, 1998). The two sycamores T15 and T16 were removed pursuant to a Notice of Consent dated 2nd March 2004 subject to a condition which required their replacement with the two hornbeams.
- The owner of the site has sought planning permission for the erection of a dwelling in proximity to the hornbeams on three separate occasions in the past 18 months. The Council's refusal to allow planning permission in relation to two of these applications was upheld at a Public Inquiry in December 2005 (the third appeal was withdrawn prior to the Public Inquiry).

Objections to the making of TPO 7/2005

- One objection has been received; from the owner of the property.
- The Objector points out that the Council must demonstrate that it is expedient and in the interests of amenity to protect the trees by way of a Tree Preservation Order.
- The Objector objects to the entire Tree Preservation Order because they consider that the Council, at the Public Inquiry in December 2005, argued that sycamores are not suitable for gardens. In those circumstances, the Objector feels that sycamores are incompatible with the site and should not be subject to a TPO.
- The Objector also points out that there is an extant planning permission for the building of an extension to No. 1 Southlands Drive and that the Council, at the Public Inquiry in December 2005 contended the close proximity of the new hornbeams T15 and T16 will provide conflict with the approved extension, requiring pruning and regular management. The Objector feels it is therefore questionable whether the hornbeams are suitable for their location.
- Finally, the Objector contends that the Council has not referred to policies concerning the identification of appropriate trees for protection and criteria for evaluating risk and has given only minimal reasons for making the Order. The Objector feels that the protection of the trees is unreasonable and inappropriate and requests that consideration be given to Council procedures, including procedures under preservation guidelines and Human Rights Act 1988 when considering the objection.
- Officers have replied to the Objector answering points but the objection has not been withdrawn (Attached: Correspondence from objector and Council reply)

Assessment

- A Tree Preservation Order may be made if the Council considers it expedient in the interests of amenity to make provision for the protection of trees in its area.

Amenity

- The trees covered by TPO 7/2005 are in a prominent and visible location which is enveloped on three sides by roads. It is considered that the visual amenity of the trees is high and that their removal would have a significant impact upon the local environment.
- In making a TPO, regard should be had to the DETR publication "Tree Preservation Orders A Guide to the Law and Good Practice". This makes it clear that the benefit or amenity that trees protected by a TPO may offer may be present or future. With regard to the two hornbeams T15 and T16, their planting was a condition of the consent for removal of mature sycamores T15 and T16 and their value in providing future sustainability of the local tree population through a tiered age range is extremely important. In those circumstances, their removal would prejudice the local environment and they are considered worthy of protection along with the other protected trees on the site.

- The amenity the trees provide has been recognised by Mr Keith Durrant, the Inspector at the recent Planning Inquiry, (including the two newly planted hornbeams). He said that
- *“I share the opinion of the Council and neighbours that the trees on the site play an important role in sustaining the leafy character of the area....their loss (especially the mature sycamores)...would be harmful to the visual amenity of the local area. That applies also to those two hornbeams recently planted in replacement of those recently felled under the terms of the preservation order.”*
- In addition to this recent decision, planning inspectors have held that the trees on the site have high amenity value in the local environment on three other occasions.
- The Statement of Common Ground signed by the Objector’s Arboricultural Consultant for the purposes of the Public Inquiry in December 2005 also expressly acknowledges that “should the Sycamores be lost, it would be detrimental to the visual amenity of the area”.
- The Objector’s point that the Council argued that sycamores are unsuitable for garden areas should be read in the context of the Public Inquiry in December 2005 and the rest of the Council’s evidence. The Inquiry was held to consider the building of a separate dwelling, creating two gardens and the Council’s evidence was that any new dwelling would have limited garden space because of the domination of the trees which would lead to pressure for removal.

Expediency

- In the light of the above, it is Officer’s opinion that the trees merit protection on amenity grounds in the light of the current and future amenity that they provide.
- However, it must also be expedient to make the trees the subject of a TPO.
- In this instance, Officers consider that it is expedient to make the TPO in order to update the Order 25, 1998 covering this site to protect the two Hornbeams T15 and T16. These trees are not automatically protected by TPO 25, 1998 and given the current and future amenity they provide, it is expedient to regularise this situation.
- There is an extant planning permission for the erection of an extension to No 1 Southlands Drive on the site in proximity to Hornbeams T15 and T16. In this regard, the Objector is of the opinion that the Council, at the Public Inquiry in December 2005, suggested there would be conflict between the extension and the hornbeams. The Council contented that the building of a separate dwelling, creating two gardens would have limited garden space because of the domination of trees, (including the hornbeam) which would cause conflict with the new dwelling leading to pressure for removal. In addition the positioning of the two Hornbeams has been previously agreed between Officers, the Objector and their arboriculturalist, having regard to the existence of

this planning permission. Should the extension be constructed, some pruning may be required in the future but most trees in the urban environment require some level of maintenance pruning.

- The TPO is not an absolute bar to works to a protected trees and Officers do not consider that this overrides the conclusion that it is expedient to protect the Hornbeams in their current location,
- Furthermore, Officers consider that the remaining trees on the site should continue to be protected. This is a site with an extensive planning history. It has been the subject of some nine planning applications since 1991 (8 of which have been for the erection of a single dwelling). The DETR Guide makes it clear that it may be expedient to make an order where trees are at risk from development pressures and Officers consider that this is the case here.

Human Rights

- The Objector has raised Human Rights issues in seeking to ensure that their objection is treated in an even handed and open manner. In particular, the Objector has raised concerns that TPO 7/2005 will be confirmed by the same authority which made it in the first place.
- In this regard, Members are advised that the Courts have found the procedure for making TPOs to be compliant with Human Rights legislation and one which strikes a fair balance between the interests of the community and the protection of individual's rights.
- However, Members will need to consider the impact that the confirmation of TPO 7/2005 will have upon the owners' rights is justified and proportionate having regard to the circumstances.
- In this regard, it is worth noting that the confirmation of TPO 7/2005 imposes a requirement for consent for felling and other works rather than forbidding them altogether. Having regard to this and the fact that Officers consider it to be expedient to make the Order in the interests of amenity, Officers believe that the making of TPO 7/2005 is a proportionate interference with the owners' human rights and should be confirmed.

RECOMMENDATION: That Members agree to authorise the making of the Tree Preservation Order No 7,2005

CONSULTEES: None

CONTACT OFFICER AND RELEVANT PAPERS:

Matt Delaney 221 591

TPO 7,2005 plan and 1st schedule TPO 25,1998 plan and 1st schedule

FIRST SCHEDULE

INDIVIDUAL TREES (With black circles on the plan)

NO. ON PLAN	SPECIES	LOCATION
T1	Cherry	Upon the land adjacent and to the north of 1 Southlands Drive, Fixby, near the north western corner. Approximately 13.5m from the western boundary wall at the entrance to Dick Wood and 3.5 west of T2.
T2	Whitebeam	Adjacent to the northern boundary with Southlands Drive. Approximately 12m from the western boundary wall at the entrance to Dick Wood and 3.5m east of T1.
T3	Cherry	Adjacent to the northern boundary with Southlands Drive. Approximately 11m from the western boundary wall at the entrance to Dick Wood and 4m east of T2.
T4	Whitebeam	Adjacent to the northern boundary with Southlands Drive. Approximately 11m from the western boundary wall at the entrance to Dick Wood. and 11.5m from the eastern boundary wall at the entrance to Dick Wood.
T5	Whitebeam	Adjacent to the northern boundary with Southlands Drive. Approximately 13m from the western boundary wall at the entrance to Dick Wood and 10.5m from the eastern boundary wall at the entrance to Dick Wood.

NO. ON PLAN	SPECIES	LOCATION
T6	Cherry	Adjacent to the northern boundary with Southlands Drive. Approximately 12m from the eastern boundary wall at the entrance to Dick Wood and 5m east of T5.
T7	Whitebeam	Adjacent to the northern boundary with Southlands Drive. Approximately 14m from the eastern boundary wall at the entrance to Dick Wood and 3.5m east of T6.
T8	Cherry	Near the north eastern corner. Approximately 17.5m from the entrance to 66 Netheroyd Hill Road and 5.5m east of T7.
T9	Whitebeam	Near the north eastern corner. Approximately 3.5m from T8 and 7.5m from T7.
T10	Cherry	Adjacent to the eastern boundary with Netheroyd Hill Road. Approximately 3m from T9 and 8m from T11.
T11	Sycamore	Approximately 8m from T10 and 8.5m from T8.
T12	Sycamore	Approximately 6.5m from T4 and 6m from T13.
T13	Sycamore	Approximately 4m from T14 and 8m from T4.
T14	Sycamore	Approximately 20m from the eastern boundary wall at the entrance to Dick Wood and 10m from T1.

T15	Hornbeam	Approximately 9m from T17 and 6.5m from T14.
T16	Hornbeam	Approximately 9m from T17 and 13m from T14.
T17	Sycamore (Twin Stemmed)	Approximately 9m from T14 and 6m from T1.
T18	Sycamore (Twin Stemmed)	Approximately 16.5m from T10 and 8m from T20.
T19	Sycamore (Twin Stemmed)	Approximately 14.5m from T10 and 6.5m from T20.
T20	Sycamore	Approximately 9m from the southern eastern corner of the site and 14.5m from T10.

GROUPS OF TREES

None.

AREAS OF TREES

None.

WOODLAND

None.