

Planning Committee
 Report of Head of Planning Services
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Tree Preservation Order (No. 10 of 2011) –

Land to the rear of Ash Lodge Drive and south west of South Lane (A1), Land to the rear of North Side, The Cardinals (A2), and a triangular parcel of land between dismantled railway and Ash Green Lane West (A3)

Recommendation

This report recommends that TPO 10 of 2011 be confirmed, with the following modifications:

- title of TPO amended to reflect wording in First Schedule and TPO maps
- description of trees (from 'various trees' to 'all trees of whatever species')
- line types on TPO maps amended to more clearly show dotted lines

Area Order

(indicated with a black dotted line)

<u>Ref. on map</u>	<u>Description</u>	<u>Situation</u>
A1	all trees of whatever species	Land immediately south of Ash Lodge Drive, east of Ash Manor School and west of South Lane, north of the dismantled railway
A2	all trees of whatever species	Land to the south of the dismantled railway and north of Poyle Road, Tongham
A3	all trees of whatever species	Triangular parcel of land between the dismantled railway, Spoil Lane and a track to the north

- be titled 'Tree Preservation Order (No.10 of 2011) – (A1) land immediately south of Ash Lodge Drive, east of Ash Manor School and west of South Lane, north of the dismantled railway; (A2) land to the south of the dismantled railway and north of Poyle Road, Tongham; (A3) triangular parcel of land between the dismantled railway, Spoil Lane and a track to the north
- be confirmed under section 199 of the Town and Country Planning Act 1990 with revised maps.

1. SITE DESCRIPTION

- 1.1 The land is designated as Countryside Beyond the Green Belt. It is within the 400m-5km buffer zone of the Thames Basin Heaths Special Protection Area. Parts of the two larger land parcels are designated as Sites of Nature Conservation Importance (SNCI).

2. RELEVANT HISTORY

- 2.1 A Screening Opinion request was submitted by Barton Wilmore in July 2011. This request sought the Council's views on whether the redevelopment of this site for up to 400 houses would represent development requiring an Environmental Impact Assessment (EIA). This Screening Opinion concluded that the development represented EIA development. Barton Wilmore requested that the Secretary of State review this opinion. The Secretary of State confirmed that it was EIA development.
- 2.2 Tree Preservation Order 10 of 2011 was made on 13 October 2011.
- 2.3 In December 2011, a formal pre-application advice request was submitted by Barton Wilmore in December 2011, on behalf of housing developers A2 Dominion and Bewley Homes. This request sought officers' opinion on the redevelopment of the site to provide up to 450 houses. The pre-application advice process is ongoing. As part of this, the developer's tree consultant has supplied survey data of the trees on the sites.

3. THIRD PARTY COMMENTS

- 3.1 Following notification of the TPO, one letter of objection was received from the tree consultant acting on behalf of the developers, raising the following points:
- Area classification is inappropriate
 - Order is inconsistently drafted, impacting on the rights of the owner
 - it is the Secretary of State's view that a TPO should only be placed on selected trees if their removal would have a significant impact on the local environment – it is clear from this view that not all trees warrant protection; only those trees that are significant to the public realm
 - the Area classification is “an alternative way of specifying scattered individual trees” according to Secretary of State guidance. The trees should be scattered and individual, not in groups or woodlands as occurs on the land made subject to the Order.
 - not all trees in the Area Order warrant protection; some are dead, dying or dangerous
 - Area classifications can be used in emergencies, as it is possible that the perceived threat of development warrants the temporary use of this classification. However, our clients are highly regarded across the development industry
 - unfortunate that the Council considered it necessary to issue an Order covering the entire site rather than engaging with the developers. This would have resulted in a more pertinent Order (officer note: the Council's tree consultant has engaged with the developer's tree consultant, and had meetings)
 - request that such a measure is only used in the short term, and that the Council reclassifies the specific trees that are worthy of an Order
 - the wording on the TPO (title, Schedule 1 and maps) needs to be consistent

(officer note: this has been amended, and it is recommended that the Order be confirmed with this modification)

- the lines on the Order should be black dotted. I consider that the line used is a broken black line, i.e. that used to depict a Group (officer note: to ensure that the TPO maps are clearly, with no ambiguity, the maps have been amended - it is recommended that the Order be confirmed with these modified maps)

3.2 A further letter has been received from the developer's tree consultant (March 2012), making the following points and objections:

- objection remains in respect of the use of the Area classification being inappropriate, and the inconsistent drafting of the Order (officer note: both of these issues have been addressed)
- developer wishes to see the Order changed to one that protects individual trees, groups and woodlands (officer note: it is the authority's intention to do this at a later stage)
- a survey of the trees has been provided – it would be a simple process to extract the information from this survey
- developer is frustrated that the Council is unwilling to follow Government guidance on TPOs – that the use of an Area Order is appropriate on a temporary basis, in an emergency
- this is no longer an emergency situation, and the trees have been surveyed. The Order should be properly made before confirmation
- the developer has made no attempt to remove the trees; they have acted professionally and reasonably; they have tailored their development proposals to maximize and embrace the tree character of the area

3.3 One further letter has been received from a local resident, which states that some of the land included in the TPO falls under his ownership.

4. PLANNING CONSIDERATIONS

4.1 It is important to note that changes have recently been made to the Tree Preservation Order Regulations. The new regulations, the Town and Country Planning (Tree Preservation) Regulations 2012, come into effect on 6 April 2012. However, the introduction of this legislation does not affect the confirming of this TPO.

4.2 The main considerations in this case are:

- the health of the trees
- visual amenities of the trees and the impact on the character of the area
- concerns raised by the objectors

Health of the trees

4.3 Both the Council's Trees and Countryside Manager and the Council's Tree Consultant have visited the sites and have indicated that the trees on the sites are worthy of formal protection.

4.4 As the TPO is an Area Order, covering approximately 28 hectares, there are clearly a high number of trees affected, in varying degrees of health. Whilst it is accepted that some trees may not be worthy of formal protection as individual trees, as they may fall under the category of 'dead, dying or dangerous', there are many trees on the site that are significant and in good health. (Officer note: under the replaced TPO regulations, there were several circumstances where

consent was not required to carry out works to protected trees, e.g. if trees were dead, dying or dangerous. The new regulations have omitted 'dying' trees from the exceptions.)

Visual amenities of the trees and the impact on the character of the area

- 4.5 This trees are clearly visible from long distant views from neighbouring gardens abutting the sites and from the many public footpaths that cross the sites. The trees the subject of this TPO therefore make a significant contribution to the character of the area.

Concerns raised by the objectors

- 4.6 The main objection, submitted on behalf of the developers by their tree consultant, is mainly in respect to the use of the Area Order TPO.
- 4.7 The Government's guidance on Tree Preservation Orders is set out in the document Tree Preservation Orders: A Guide to the Law and Good Practice (2000). The following sections are taken from that guidance document:

- LPAs may 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'. (paragraph 3.1)

- It may be expedient to make a TPO if the LPA believe there is a risk of the tree being cut down or pruned in ways which would have a significant impact on the amenity of the area. It is not necessary for the risk to be immediate. In some cases the LPA may believe that certain trees are at risk generally from development pressures. (paragraph 3.5)

- In the Secretary of State's view the area classification should only be used in emergencies, and then only as a temporary measure until the trees in the area can be assessed properly and reclassified. LPAs are encouraged to resurvey their existing TPOs which include the area classification with a view to replacing them with individual or group classifications where appropriate. (paragraph 3.18)

- 4.8 The use of an Area TPO is intended to be a temporary measure, in line with Government guidance set out above. It is the local planning authority's intention to revoke and remake this TPO at a later stage to make it more specific. It is likely that trees will eventually be protected by a mix of woodland, group and individual TPOs.
- 4.9 The use of an Area Order was considered by the Council's tree consultant and officers to be reasonable. The developer's tree consultant has objected to this approach, on the grounds that his clients are highly regarded across the development industry. However, there have been instances where other reputable housing developers have acquired sites and removed trees prior to applying for planning permission. As the Secretary of State acknowledges that Area TPOs can be used in emergencies, this approach was considered to be both reasonable and necessary.
- 4.10 It is acknowledged that the developer has provided tree survey data, which shows all the trees across the sites, their position, species and an assessment of their health. However, the Council's tree consultant has not had the opportunity of reviewing the data submitted with the trees in leaf. The trees ideally need to be in leaf so that both the health of the trees, and their visual impact, can be fully and properly assessed.

- 4.11 It is acknowledged that some trees within the Area TPO are not worthy of protection, and some may be dead or dangerous, or in poor health. However, as set out above, the Area Order is intended to be a temporary measure. When more specific TPOs are made later, such trees will not be included.
- 4.12 The developer's tree consultant considers that the wording within the TPO should be consistent throughout to avoid ambiguity. The title of the TPO differs from the wording on the First Schedule and the maps. It is agreed that the wording should be consistent across all the TPO documents. Therefore, it is recommended that the TPO be confirmed with a revised title.
- 4.13 The developer's tree consultant has indicated that, in his view, the line type shown on the maps is a broken black line. A dotted line should be used to depict an Area TPO. The maps drawn up for the TPO show slightly elongated dots. This could be interpreted as a broken lack line. Again, to avoid any ambiguity, new maps have been drawn up which clearly shows the Areas marked with a dotted line.
- 4.14 One further representation was received from an owner of part of the land subject of the TPO. The owner has acknowledged that there is a tree on land that he owns, and that he will have to refrain from pruning the tree as a result of this TPO. However, as set out above, this Area Order is a temporary measure. When the trees are reviewed, and more specific TPOs made, this tree may not be included. Even if the tree is worthy of formal protection, the TPO will not prevent all work; it will just mean that the owner will need to apply for permission first.

Conclusion

The Area TPO is an appropriate way of providing temporary protection for the trees on these three sites. It is the local planning authority's intention to make a more specific TPO at a later stage.

Background Papers:

- advice from Council's Tree Consultant (Planning Services)
- advice from Trees and Countryside Manager (Parks and Countryside Services)