

**North East Derbyshire District Council**

**Planning Committee**

**20<sup>th</sup> July 2021**

**Tree Preservation Order 276 – Land off Clay Lane, Clay Cross**

**Report of the Planning Manager (Development Management)**

This report is public.

**Purpose of the Report**

- To advise Planning Committee of the making, provisionally, of Tree Preservation Order No.276 – Land off Clay Lane, Clay Cross.
- To advise Planning Committee of the receipt of objections/other comments in respect of the making and/or potential confirmation of the Order.
- To allow Planning Committee, as required, to determine if the provisional Order should be confirmed/not confirmed or confirmed in an amended, modified form.

**1 Report Details**

- 1.1 Further to the granting of planning permission for development of the land (NED/20/00221 refers), the subject of the provisional order, and preparatory works commencing, concern was raised about the potential retention/removal of certain trees on the site. As such, and to ensure the retention of the remaining trees on the site, a provisional tree preservation order on two areas of trees on the site was provisionally made under Officer delegated powers on the 25<sup>th</sup> February 2021. The trees were identified in the approved application details to be retained post development taking place
- 1.2 The two areas relate to trees along the site's western and eastern boundaries, as set out below in Fig 1.
- 1.3 The trees were considered to be under threat from the ongoing works taking place on the site and the trees amenity was considered to necessitate formal protection.
- 1.4 There are many residential properties nearby and the public footpath network runs along the site boundary. The retention of the trees was also considered important in terms of the part the trees played in supporting the ecology of the area.
- 1.5 When taken together, these matters were considered sufficient to merit provisional protection of the trees.

**Fig 1. Extent of the provisional Tree Preservation Order**



1.6 Subsequent to the making of the Order, representations have been received from a number of parties as follows:

The Parish Council object to the Order as made as it appears to show trees located within the adjacent allotment gardens and includes public footpath 13. A suggested variation of the Order is to redraw the boundary of Area A2 to run along the line of the public footpath.

Two comments have been received supporting the confirmation of the Order commenting that:

- A. Some trees, shown to be retained by the planning application documents, have already been topped and felled.
- B. The trees are claimed to be owned by another party.
- C. The trees should be retained from an ecological aspect.
- D. The trees offer a level of privacy.

Other comments have been made but they relate to the wider concerns about the development of the site as a whole.

Further communication has been received from a further interested party asking if an order can be made on the remaining trees on the site, regretting the loss of other trees from the site and subsequently seeking clarity on the potential confirmation process.

One letter, on behalf of the site's prospective developer, has been received making the following points:

- A. Before confirming the Order the Council should be able to show that the protection of the trees would bring a reasonable degree of public benefit in the present or future. Trees may not merit formal protection, where, even though they support wider amenity, they are under good arboricultural management.
- B. The site has secured consent to be developed for housing. The supporting documents set out which trees were to be removed and which to be retained. All the protected trees are to be retained and the planning consent granted includes conditions securing landscaping and for ecological purposes.
- C. The trees have only limited visibility and are heavily screened by existing vegetation. Limited views are only secured at Clay Lane bridge and along the public footpath and visibility subsequently will be further limited by the new development.
- D. The trees are limited in height and are not of high quality or value, there is limited future amenity potential, all the trees are commonplace, none of the trees have cultural or historic value, none of the trees in Area 1 are of high quality or value in landscape terms and the site itself has no formal landscape designation, the trees offer very limited ecological interest (which is otherwise addressed by the conditions attached to the grant of planning consent) and the trees are of such limited impact they offer little by way of assisting climate change.
- E. In conclusion it is considered that the removal or pruning of the trees in Area 1 would not impact negatively on the local environment nor would the retention of the trees result in public benefit in the present or future. There are no development pressure to remove the trees and the future positive management of the trees in Area 1 may require pruning in the future and the formal protection of the trees will impact on proactive management. Management of the trees in Area 2 is also required and the formal protection of the trees in that location would be an unreasonable burden in view of the consent for development granted.

In conclusion, the permanent TPO would not comply with legalisation or guidance and is not justified

- 1.7 The trees, the subject of this provisional TPO, occupy part of a site for which residential development has been granted although the trees occupy its periphery. Some works have subsequently taken place on the site. The trees, the subject of the TPO, were trees identified in the approved application details to be retained. There should therefore in theory be no reason to remove the trees in any case. However, as the site has had works undertaken on it, Officers have reacted to concerns about the trees long term retention and considered that formal protection was at least provisionally needed.
- 1.8 The comments made in representation are noted. However, contrary to the comments made by the developer Officers retain the view that the trees do offer wider amenity value. They are clearly visible along Press Brook from existing residential development to the west and also from other public vantage points both from the local road and highway network (both Areas 1 and 2). Additionally, the ecological value of Press Brook and its environs has been identified as an important

issue and the trees do play some role in enhancing the ecological interest of the site. Further, whilst the issue of amenity is noted by the developer the trees will play a part in the amenity offered to future residents of the site who will be able to enjoy the trees at close quarters should they be retained.

- 1.9 A tree preservation order is normally made to protect trees in the interests of amenity and this normally involves an assessment of wider visibility, impact (including the contribution to the wider landscape) and the trees size and form. Before confirming an Order the Council should satisfy itself that the tree(s) would bring a reasonable degree of public benefit in the present or future. Amenity comprises the visibility of the trees, their individual or collective impact as well as other factors such as the trees importance to nature conservation and/or any response to climate change (as set out by the developer in representations).
- 1.10 In this case, and contrary to the comments of the developer, Officers take the view that the trees do offer a high level amenity to the area. The trees are readily visible to a public audience from the adjoining public road and footpath network and from existing residential properties close by. It is acknowledged that the site is not part of a specific landscape designation but the trees do contribute to the quality of the area and they will be easily visible to any future occupiers of the site. Additionally, the site is considered to offer ecological benefits to various species and this adds further value to the trees.
- 1.11 It would be preferable to allow proper unrestricted arboricultural activity to take place on site but Officers are not convinced at this stage that this will necessarily be carried out such that the trees will be ultimately retained.

## **2 Conclusions and Reasons for Recommendation**

- 2.1 Officers note both the desire to protect the trees but also the developer's request not to confirm the Order.
- 2.2 Officers consider that the area of trees, the subject of the TPO, do play an important part in the provision of amenity to the area, both now and in the future, and provide wider ecological benefits.
- 2.3 Officers also note that the making of a TPO does not in itself necessarily prevent works being undertaken to trees, otherwise protected, and, in some cases, their removal, where appropriate.
- 2.4 The comments of the Parish Council are noted, and whilst, not considered necessarily to merit amendment to the Order, Officers consider, on balance, that to prevent confusion, the Order should be amended to incorporate the request of the Parish Council and so specifically draw the boundary of Area 2 along the site boundary with the public footpath.
- 2.5 On that basis Officers conclude that the trees should be protected by formal Order (i.e. that the provisional TPO should be confirmed in a modified form to reflect the comments of the Parish Council).

### **3 Consultation and Equality Impact**

3.1 The owners of the trees and other interested parties have been consulted as part of the process undertaken in making the Order.

### **4 Alternative Options and Reasons for Rejection**

4.1 There is the alternative option to not confirm the Order or to modify it, confirming it in a different format. However, for the reasons set out above neither of these options is considered appropriate in this case.

### **5 Implications**

#### **5.1 Finance and Risk Implications**

5.1.1 There is no financial or other risk from the confirmation of the Order as the option remains for the tree owners to make application to seek to undertake works to or remove trees.

#### **5.2 Legal Implications including Data Protection**

5.2.1 All proper legal processes have been followed with the land owners advised of the making of the provisional Order and opportunity given for comments to be made (see above).

5.2.2 The provisional TPO has to be confirmed within 6 months from its making, i.e. the 25<sup>th</sup> August 2021, to retain effect. Any failure to confirm the order within that time would mean it would no longer have effect and any protection lost.

#### **5.3 Human Resources Implications**

5.3.1 None.

### **6 Recommendations**

6.1 That Tree Preservation Order 276 (Land off Clay Lane, Clay Cross) is confirmed in a modified form as set out above.

### **7 Decision Information**

<p><b>Is the decision a Key Decision?</b> A Key Decision is an executive decision which has a significant impact on two or more District wards or which results in income or expenditure to the Council above the following thresholds:</p> <p><i>BDC: Revenue - £75,000</i> <input type="checkbox"/> <i>Capital - £150,000</i> <input type="checkbox"/></p> <p><i>NEDDC: Revenue - £100,000</i> <input type="checkbox"/> <i>Capital - £250,000</i> <input type="checkbox"/></p> <p><input checked="" type="checkbox"/> <i>Please indicate which threshold applies</i></p>	No
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<b>Is the decision subject to Call-In?</b> (Only Key Decisions are subject to Call-In)	No
<b>Has the relevant Portfolio Holder been informed</b>	No
<b>District Wards Affected</b>	Clay Cross South
<b>Links to Corporate Plan priorities or Policy Framework</b>	All

## 8 Document Information

Appendix No	Title
<b>Background Papers</b> (These are unpublished works which have been relied on to a material extent when preparing the report. They must be listed in the section below. If the report is going to Cabinet (NEDDC) or Executive (BDC) you must provide copies of the background papers)	
Report Author	Contact Number
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