Report Prepared by the Council’s Tree Officer

Background

In November 2015 the Council was made aware that significant tree clearance was underway at the Land. The Council’s tree officer visited the Land and noted that the previously heavily wooded garden had been largely cleared of mature trees and shrubs.

The Land is accessed at the end of Woodside Road and abuts the end of three other cul-de-sacs (Twinoaks, Lebanon Drive, Sandroyd Way). The large mature trees on the Land can be viewed from a number of public locations (see Appendix 4). It was considered that the remaining trees constituted a valuable public amenity and it was considered expedient to serve a blanket ‘Area’ TPO to protect all the remaining trees on site. This ‘Area’ TPO was designated EL:15/13 and was successful in halting further tree clearance of the Land and allowing the Council to more closely consider the remaining trees.

In January 2016 the Council reviewed this blanket TPO and replaced it with TPO EL:16/02 which seeks to protect only trees that are worthy of long term TPO protection.

NB. A portion of the Land also has trees protected by an earlier extant TPO EL:10/23. These are marked as such on the plan in Appendix 4 and are referred to by the objectors. TPO EL:10/23 had replaced an earlier area TPO designated ESH:73 which was revoked in 2010.

Objections

Objection from Mr R J Hardwick, owner of the Land:

Mr Hardwick’s objection letter of 17/02/16 makes three points that I will list below with my comments:

1. Having taken considerable care to avoid damage to trees relating to existing TPO EL:10/23 and many other trees on the boundaries of my property, to the best of my knowledge I was undertaking a legitimate clearance of unwanted trees and vegetation from my garden which had been unmanaged for some years.

Officer comments:
It is agreed that Mr Hardwick did not carry out any illegal works and that the clearance of the trees on the Land was legitimate and ceased at the point that the new TPO was made. This point has been made to Mr Hardwick.
2.

- In 2010 the Council reviewed its policy of using “blanket” TPOs on properties to the North of Woodside Road, including my own, resulting in certain individual trees being considered as warranting protection under TPO EL:10/23 on my property. In that survey none of the trees now covered by TPO EL:16/02 were included indicating that they did not justify protection. The only explanation coming from the Council’s authority to justify this major change in policy is that trees subject to TPO EL:16/02 have mysteriously become of ‘amenity’ value; to whom, it is difficult to envisage; certainly not neighbours bordering my property.

Officer comments:
In 2010 the Council reviewed the blanket TPO ESH:73. This TPO included an area running along the eastern boundary of the Land. Some trees on the Land were therefore included within that TPO and subsequently protected by the TPO that replaced it (EL:10/23). These trees were namely T23, T24, T25 and T26 as shown in Appendix 4.

Trees located outside of the original blanket TPO (ESH:73) were not considered for inclusion in the new TPO (EL:10/23) and as such the majority of the trees on the Land were not protected. At that time (2010) trees located outside the original blanket TPO were not considered to be under threat. A TPO protecting trees outside the original blanket TPO boundary was therefore not considered a reasonable course of action. It is not the case that the Council considered the trees located outside the original blanket TPO to have no amenity value.

3.

- I would not claim to be an expert on trees. However, I have had a career covering broad aspects of horticulture in an advisory and research capacity. In my experience all the trees covered by TPO EL:16/02 are in generally poor condition as a result growing unmanaged in close proximity. Furthermore, a number of the trees in this vicinity were damaged or brought down by the storm of October 15th /16th 1987. This has resulted in trees lacking lower branches, with many dead branches and a poor sized canopy in proportion to their height. Moreover, this situation will not improve as trees of this maturity are most unlikely to develop new growth on middle and lower regions of the trunk. Being in such condition and in an exposed position trees covered by this TPO are likely to present a perpetual management, safety and liability problem in the future.

Officer comments:
Tree Officers have visited the Land on a number of occasions. A detailed condition survey has not been undertaken by the Council, and it is not the Council’s responsibility to do so, however no significant issue were noted with the trees at the time of the Tree Officer visits. It has been recommended to Mr Hardwick that he engages an appropriate expert to carry out a detailed inspection and make recommendations as appropriate. The Council is happy to discuss any necessary works recommended and an application can be made to the Council at any time.
Objection from Mr Peter C Nicholson, owner of 26 Woodside Road:

Mr Nicholson’s objection letter of 16/02/16 makes numerous points that I will list below with my comments:

1. Officer comments:

I have on two separate occasions asked for the details of TPO EL:15/13 to be published on the council website and promised, both times, that it will be published within seven days. This was for there to be transparency in government. It would also show the discrepancies between the area shown on that TPO and the extended area covered by its replacement TPO EL:16/02 which includes trees outside the boundary of 19 Woodside Road. This information has not been released for public scrutiny.

Officer comments:
TPO EL:15/13 has been revoked and is as such no longer in existence. Mr Nicholson was sent a hard copy of TPO EL:15/13 when it was originally made and more recently a notice of its revocation. The Council is not under any obligation to publish TPO documents on the website however generally we do so after they have been confirmed which can take up to 6 months after serving the Order.

2. Officer comments:

It is my view that adequate protection of the amenity value of trees was established by TPO EL:10/23 which was a replacement for a long standing blanket TPO over the properties to the north of Woodside Road. The proposed new TPO 16/02 will impose the huge burden of planning applications for pruning or removal of extra trees, completely the opposite of the intended effect of TPO EL:10/23.

Officer comments:
The intended effect of TPO EL:10/23 was to review the older ‘blanket’ area Order designated ESH:73. Only trees within the older Order were considered. Trees within the Land outside the older Order were not considered under threat at that time and were therefore not considered for inclusion in the replacement Order (EL:10/23).

3. Officer comments:
The newly designated trees T4, T5 and T6 are not visible from Woodside Road and the residents of 22 and 24 Lebanon Drive do not wish to see any additional TPO’s to those in the 2010 restrictions. I checked with the Council Tree Department in 2014 that they were happy that only the trees in TPO:EL:10/23 were of interest for their amenity value. With this in mind every effort was made to clearly identify those TPOd trees, and others worthy of protection, before work commenced to return the garden at 19 Woodside Road to its former cultivated, terraced, layout.

Officer comments:
No other objections from residents in Lebanon Drive have been received in respect to this Order. As explained in officer comments above, the majority of the trees on the Land were not considered for inclusion in EL:10/23.
4.

Officer comments:

The Order does not prevent any works required to make trees safe. Mr Nicholson was informed of this verbally on site, as were the contractors undertaking the felling. The Land owner Mr Hardwick was also notified by email. All parties were also informed that the contractors were able to make the site safe and were able to continue working on any trees partially felled.

High winds in January affected very many trees in the Borough. The pictures provided by Mr Nicholson of the fallen branches were entirely typical of the sort of wind damage to be expected by high winds and do not provide evidence that the trees pose an unacceptable level of risk.

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5.

Officer comments:

My objection is that TPO:EL:15/13 should not have been issued without consulting the neighbours put in danger by halting the work on site. The replacement order designating individual trees has extended beyond the emergency area and has not taken account of the public interest of the immediate neighbours. Placing restrictions such that any further pruning of newly designated TPO trees requires formal planning approval is contrary to your own stated strategy as drafted in January this year. It is also immoral to add unnecessary TPOs when you are proposing to charge fees for their removal to enhance the Council’s revenue stream.

Due to the expediency involved in making a TPO it is not practical or advisable to consult parties prior to service. For this reason a 28 day period after service allows for objections to be made and subsequently a further five month period is allowed to discuss amendments with objectors and present objections to Council Members prior to final confirmation of the Order.
There are no current proposals for compulsory charging for TPO applications. It is believed Mr Nicholson has misinterpreted the Tree and Woodland Consultation document which discusses the opportunity to charge for an optional premium ‘Fast-Track’ tree application service.

6.

I hereby formally request that TPO:EL:16/02 is revoked immediately and that a thorough investigation is made into the continued inaccuracies in documenting the location of individual trees and area boundaries on official tree plans. These errors in drafting TPO:EL:16/02 are sufficient alone to warrant its withdrawal. I would recommend full discussion with neighbours before proposing a replacement.

Officer comments:
Government guidance makes it clear that local authorities do not need to plot trees within the TPO with pinpoint accuracy and it is considered that both TPOs EL:16/02 and EL:10/23 adequately identify the trees and meet the legislative criteria.

At a meeting on the Land with the owner Mr Hardwick, it was agreed that four trees could be slightly re-plotted on the TPO map as presented in Appendix 6. This amendment can be agreed at this committee.

Conclusion

Confirm Tree Preservation Order EL:16/02 subject to the modifications shown on the plan in Appendix 5.