

PLANNING COMMITTEE – Date:12 December 2018

**Report of the Assistant Director of Environment, Housing and Regeneration  
Directorate**

Ref: TPO 2018/10	WARD: Belmont
------------------	---------------

Site: 25 Queens Road, Sutton, SM2 6BZ

Proposal: To confirm the provisional Tree Preservation Order (TPO) 2018/10 protecting six Pine trees (T1 to T6). The trees are located along the southern and eastern boundary of the property along Queens Road and The Crescent.

**Recommendation:**

It is recommended that Tree Preservation Order 2018/10 be formally confirmed without modifications.

**Reason for report to Committee** – To decide whether to confirm a provisional Tree Preservation Order where one or more objections have been received.

**Summary:**

The tree subject to provisional protection under Tree Preservation Order (TPO) 2018/10 are considered worthy of continued protection for the following reasons:

- The preservation of the six Pine trees are considered expedient in the interests of amenity.
- Having been assessed for health, longevity, and visibility the trees are considered suitable to be protected by TPO.
- The Pine trees are clearly visible from both Queens Road and The Crescent in a prominent location. The trees make a key landscape contribution to the setting, street scene and the character and appearance of the area.
- The loss of the trees would have a significant impact on the local environment and its enjoyment by the public.

**BACKGROUND**

- 1.1 Planning Application 2018/00783 was submitted to the Council for the consideration of a single storey, side extension at 25 Queens Road. The Council's Principal Tree Officer was consulted on the proposals to assess the impact of construction on two Pine trees within the property (T1 & T2), located in close

proximity to the footprint of the proposed extension. The two Pine trees were found to have high amenity value and Planning Conditions were attached to the Consent to ensure necessary precautions were taken to avoid root damage and severance during construction.

- 1.2 As a precautionary measure, trees T1 and T2 were assessed for inclusion in a TPO, and were found to warrant protection in the interest of preserving public amenity. In the wider context, a further four Pine trees (T3, T4 T5 and T6) were found to be of equal merit, and as a group, all six trees have collective value and are considered to be an important landscape feature. On this basis, provisional TPO 2018/10 was made on 4 July 2018. Under the Town and Country Planning (Tree Preservation) (England) Regulations 2012, the Council are required to confirm this provisional Order within six months of it being served. Pine trees (T1 to T6) will no longer be protected by the provisional Order unless it is confirmed by the 3 January 2019.
- 1.3 The Council received two objections to the Order 2018/10 in an email dated the 27 July 2018 from the owner of the property and letter dated 27 July 2018 from the neighbour at 41 The Crescent and therefore the decision to confirm the Order or not must be made by Planning Committee.

#### **TPO PROPOSALS**

- 1.4 When deciding whether to serve a TPO, the present or future public amenity value of the trees must be considered. Tree Preservation Orders are served to protect selected trees if their removal would have a significant impact on the local environment. TPO trees should generally therefore be visible from a public place, such as a road or footpath.
- 1.5 The Pine trees are mature specimens and are visible from both Queens Road and The Crescent. All six trees are considered to have high amenity value by virtue of their size, prominence, form, arboricultural merit, contribution to the 'Alpine' style of the property and contribution to the street scene. It is considered that the loss of the trees would have a significant, negative impact on the character and appearance of the area.
- 1.6 Given that two objections have been received, officers are seeking authority to confirm the provisional Tree Preservation Order, which expires on 3 January 2019 in order to continue the protection of the six Pine trees.

#### **PUBLICITY**

- 1.7 Notification was carried out in line with the provisions under Section 198(1) of the Town and Country Planning Act 1990 (as amended) and the Council's Statement of Community Involvement by way of letters served to all those with an interest in the land and to the immediate adjoining properties.
- 1.8 **Representations**

- 1.9 An objection was received by email on 27 July 2018 from the owner of 25 Queens Road, SM2 6BZ. The reasons given for the objection can be summarised as follows:
- a) Tree T3 has a lean out toward the road and concern is expressed that it poses a danger;
  - b) Recent work by British Telecom within the highway involved excavation close to the trees and could have had a detrimental effect on them;
  - c) Requests that the TPO is reconsidered on the basis that the owner works with the Council and agrees to conserve them and notifies the Council of any proposed works
- 1.10 A second objection was received from the owner of 41 The Crescent. The reasons given for the objection can be summarised as follows:
- a) The trees cause a significant amount of shade on the property and garden;
  - b) The trees drop cones and needles all over the front and back of the property and garden;
  - c) Pollen is a potential asthma irritant;
  - d) In view of the age and height of the trees, they are potentially approaching a state of significant hazard in stormy weather. A considerable amount of limbs are drooping.
- 1.11 No other representations were made in relation to the TPO 2018/10

### **LEGISLATIVE AND PLANNING POLICY CONSIDERATIONS**

- 1.12 Town and Country Planning Act 1990 (as amended), Town & Country Planning (Tree Preservation) (England) Regulations 2012 and associated planning practice guidance notes.
- 1.13 Under section 198, 199, and 201 of the above Regulations, the Local Planning Authority has the power to make Tree Preservation Orders:
- Where there is a concern for the natural environment.
  - To ensure that trees are not unnecessarily lost.
  - To ensure that adequate tree coverage is maintained and
  - To encourage the retention of healthy trees with public amenity value.
- 1.14 Section 198(1) of The Town and Country Planning Act (1990) states that 'If it appears to a Local Planning Authority that it is expedient in the interests of amenity to make provision for the preservation of trees or woodlands in their area, they may for that purpose make an order with respect to such trees, groups of trees or woodlands as may be specified in the order'.

- 1.15 Policy 28 Character and Design of the adopted Local Plan states the importance of respecting existing local landscape and streetscape character of the varied areas within the Borough. This includes protecting and respecting the existing trees, hedges, landscape features, landforms and other natural features within the area.
- 1.16 **Public Sector Equality Duty (PSED) and Human Rights:**
- 1.17 Under the Equalities Act 2010 the Council must have due regard to the need to eliminate discrimination, harassment or victimisation of persons by reason of age, disability, pregnancy, race, religion, sex and sexual orientation. This provision of TPO 2018 /10 has been processed and assessed with due regard to the PSED. The proposed TPO is not considered to conflict with the Duty.
- 1.18 The provision of TPO 2018/10 has also been considered in the light of the Human Rights Act 1998 and it is considered that the analysis of the issues in this case, as set out in this report and recommendation below, is compatible with the Act.

## **PLANNING CONSIDERATIONS**

- 1.19 The principal considerations in relation to TPO 2018/05 44 Sandy Lane South are:
- **Amenity Value and suitability for a TPO**
  - **Health and condition of the trees and likelihood of remaining longevity**
  - **Relative public visibility**
  - **Objection to the TPO**
  - **Considerations of Central Government Guidance**
- 1.20 **Amenity Value and suitability for a TPO**
- 1.21 The trees were evaluated by the Council's Principal Tree Officer for their contribution to public amenity. This included using the Tree Evaluation Method for Preservation Orders (TEMPO) criteria which is an 'industry standard of assessment used by over 60 local authorities and private consultancy. The TEMPO assessment for all six Pine trees endorsed their high amenity value and confirmed that a TPO was warranted in the interest of their preservation.
- 1.22 **Health and Condition of the trees and likelihood of remaining longevity:**
- 1.23 In terms of tree health and condition, all six trees were found to be in good health, free from defect or disease. The trees display no obvious or significant structural inadequacies, which would present foreseeable risk.
- 1.24 **Relative Public Visibility:**
- 1.25 The six Pine trees make both an individual and collective contribution to the visual amenity of the area and they can be clearly seen from Queens Road and The Crescent.

- 1.26 **Objection to the TPO**
- 1.27 The first of two objections was received from the owner of the trees at 25 Queens Road, SM2 6BZ.
- 1.28 **Objection-** Tree T3 has a lean out toward the road and concern is expressed that it poses a danger
- 1.29 **Officer Comment** – Tree 3 is growing out toward the road as a result of Phototropism (growing out toward the light) rather than due to any visible root instability. This is common occurrence when trees grow in groups and does not lead the Council to conclude that the tree is currently in a dangerous state. Should the condition of the tree change in the future, an application can be made free of charge to the Council to consider any appropriate remedial action deemed necessary.
- 1.30 **Objection-** Recent work by British Telecom within the highway involved excavation close to the trees and could have had a detrimental effect on them
- 1.31 **Officer Comment-** The impact of the work by BT is unknown as the footpath has been resurfaced. Whilst excavation near trees can be problematic if undertaken without due care and attention for the retention of roots, all utility companies are expected to understand and adhere to NJUG (Nation Joint Utilities Group) Volume 4 guidelines when working in close proximity to trees. The NJUG guidelines set out the necessary precautions to avoid root damage and Council have no reason to believe that BT have not followed the correct working methodologies.
- 1.32 **Objection-** Requests that the TPO is reconsider on the basis that the owner works with the Council and agrees to conserve them and notifies the Council of any proposed works.
- 1.33 The request by the owner that he agrees to conserve the trees and notify the Council of any proposed works is not dissimilar in practice, to the TPO Regulations. A tree works application (notification) would need to be submitted to the Council carryout works pruning works, but assuming that this was appropriate and did not cause harm to the amenity value or condition of the trees, this would generally be agreeable. However, the purpose of the TPO is to ensure the long term preservation of valuable trees and allow the Council to limit or refuse works if these are deemed to be harmful. The good will of the present owner (although welcome) is not considered to be robust enough to fulfil the Councils duty under Part VIII of the Town and Country Planning Act 1990 to formally protect trees where this is expedient in the interests of amenity.
- 1.34 The second of the two objections was received from the neighbour, at 41 The Crescent, SM2 6BP

- 1.35 **Objections-** a) The trees cause a significant amount of shade on their property and garden b) The trees drop cones and needles all over the front and back of the property and garden c) Pollen is a potential asthma irritant
- 1.36 **Officer Comment-** Shade, falling leaves and pollen are a natural phenomenon that cannot be legislated against and there are no specific government criteria to take into consideration. It is an unfortunate but not an uncommon situation associated with large trees growing in the urban environment and the Council must weigh the inconvenience of shading, pollen and clearing needles against the benefits offered to the public through the tree's amenity.
- 1.37 The only way to provide a permanent solution to these issues would be to remove the trees. If this premise was applied to all such situations and allow the removal of valuable trees on these grounds, then the quality of the landscape and environment in Sutton would be radically and irreparably altered.
- 1.38 **Objection-** In view of the age and height of the trees, they are potentially approaching a state of significant hazard in stormy weather. A considerable amount of limbs are drooping
- 1.39 **Officer Comment-** All trees have the potential to fail in adverse weather conditions and therefore this cannot be a reason to prevent the Council from serving a TPO in the interests of preserving public amenity. The six Pine trees in question are currently in good health and are free from significant defects. The onus on any property owner is to ensure that their trees remain in a safe condition and this situation is not altered by the serving of the TPO. Should there be cause for concern over the safety of the trees at any time in the future, an application supporting this view can be submitted to the Council to consider any remedial action deemed necessary.
- 1.40 **Consideration of Central Government Guidance**
- 1.41 This can be found within The Ministry of Housing, Communities & Local Government [MHCLG] website: <https://www.gov.uk/guidance/tree-preservation-orders-and-trees-in-conservation-areas> Published 6 March 2014. Paragraph: 007 Reference ID: 36-007-20140306 makes reference to 'amenity' within the context of protecting trees within TPO's. Statutory orders should be used if the removal of a tree / woodland would have a significant negative impact on the local environment. It is the considered opinion that the loss of the six Pine trees (T1 to T6) 'would have a significant negative impact on the local environment and its enjoyment by the public'. Given the trees can be viewed and enjoyed from a number of viewpoints locally, the loss of the trees would have a harmful impact on the amenity of the immediate and surrounding area and in order to protect the landscape character, it is expedient for the Council to protect the tree by an Order.

## CONCLUSION AND RECOMMENDATION

1.42 The trees subject to provisional protection under Tree Preservation Order (TPO) 2018/10 is considered worthy of continued protection for the following reasons:

- The preservation of the six Pine tree is considered expedient in the interests of amenity.
- Having been assessed for health, longevity, and visibility the trees are considered suitable to be protected by TPO.
- The objection to the TPO are recognised as being valid but upon consideration, do not outweigh the public benefit provided by the tree (T1). In light of the options to sensitively manage the tree and accommodate it in any necessary repairs, the objections do not amount to material consideration of such significance that they would outweigh the harm to and loss of public amenity, if the order is not confirmed.

1.43 It is therefore recommended that the Tree Preservation Order be confirmed.

## BACKGROUND PAPERS

Appendix 1 - Order (TPO 2018/010)

Appendix 2 - TEMPO assessment and photographs

Appendix 3 - Objection letters

This page is intentionally left blank