

## Bath & North East Somerset Council

MEETING:	Development Control Committee
MEETING DATE:	5 <sup>th</sup> June 2013
TITLE:	Tree Preservation Order: Bath and North East Somerset Council ( Land between Vivien Avenue and Wellow Brook, Midsomer Norton No.30 ) Tree Preservation Order 2013
WARD:	Midsomer Norton
<b>AN OPEN PUBLIC ITEM</b>	
<b>List of attachments to this report:</b> Tree Preservation Order map Letter of objection	

### 1 THE ISSUE

1.1 An objection has been received from the owner of the parcel of land between Vivien Avenue and Wellow Brook following the making of the Tree Preservation Order entitled Bath and North East Somerset Council ( Land between Vivien Avenue and Wellow Brook, Midsomer Norton No.30 ) Tree Preservation Order 2013 ("the TPO"), which was provisionally made on the 21<sup>st</sup> February 2013 to protect a group of three Alders encircled within a broken black line and identified as G1 on the map which make a contribution to the landscape and visual amenity of the area.

### 2 RECOMMENDATION

2.1 The Development Control Committee is asked to confirm the Tree Preservation Order entitled Bath and North East Somerset Council ( Land between Vivien Avenue and Wellow Brook, Midsomer Norton No.30 ) Tree Preservation Order 2013 without modification.

### **3 FINANCIAL IMPLICATIONS**

3.1 Financial: Under the law as it stands the owner of a tree cannot claim compensation from the Council for making a tree the subject of a tree preservation order. However if the tree is covered by a tree preservation order and the Council refuses an application to fell the tree, the owner may be able to claim compensation if he or she suffers a loss or damage as a consequence of that refusal.

3.2 Staffing: None.

3.3 Equalities: In deciding to make the TPO the provisions of the Human Rights Act 1998 have been taken into account. It is considered that Article 8 (right to respect for private and family life) and Article 1 of the First Protocol (protection of property) of the convention rights apply in this matter. Confirmation of the TPO is however, considered to be a proportionate interference in the wider public interest.

3.4 Economic: None.

3.5 Environment: The trees which are the subject of this report make an important contribution to the visual amenity and landscape in the local area.

3.6 Council Wide Impacts: The confirmation of the TPO will involve officers from Legal Services. Officers from Development Control will need to take account of the trees when considering any application for development or alterations on the site which might affect them.

### **4 THE REPORT**

#### **4.1 Background**

4.2 The trees which are the subject of the TPO are growing within the parcel of land between the rear gardens of 38 and 40 Vivien Avenue and Wellow Brook and which are encircled in a broken black polygon and identified as G1 on the attached plan.

4.3 The Council's Senior Arboricultural Officer was consulted on an outline planning application for the erection of five dwellings ( reference 13/00288/OUT ). A request from a member of the public had also been received to consider trees within the parcel of land for a tree preservation order.

4.4 The trees were not protected so the owner could remove the trees without the need to notify the Council. The trees were viewed and considered to be of sufficient landscape merit that a Tree Preservation Order should be made so that there was an opportunity to ensure that the trees and their visual contribution within the landscape were given due consideration.

#### **4.5 Responses to the Tree Preservation Order**

4.6 The Council are required to take into account all duly made objections and representations before deciding whether to confirm the TPO.

4.7 One objection has been received from the owner following the making of the TPO. Committee Members are advised to read the letter of objection attached.

4.8 The main objections are summarised below.

- i) The arboricultural consultation response to the outline planning application 13/00288/OUT made no mention of the value of the Alders but mentioned trees which were beyond the red line boundary.
- ii) The making of the TPO to protect the Alders is considered to exhibit an inconsistency because these were not mentioned in the consultation response.
- iii) Based on the absence of arboricultural comments relating to the Alders but the inclusion of the trees along Wellow Brook the TPO should have been made on the trees along the brook.
- iv) The TPO was made to interfere with the planning application when it could have been made at any previous time. Only the trees affecting the planning application were singled out.
- v) A public sewer runs directly under the trees and could be damaged by root growth or uprooting of the trees in high winds.

4.09 The objection to the Tree Preservation Order outlined in section 4.08 above has been considered by the Officer and the following comments are made in respect of each point:

- i) The consultation response to 13/00288/OUT was based on the lack of information provided. No further information such as a tree survey had been provided in response to the consultation comments, therefore, the information provided relating to trees was considered inadequate. The proposal did not demonstrate due consideration of retained planning policy NE4 of Bath and North East Somerset Local Plan (Adopted 2007).
- ii) It is not the Council's policy to advertise the making of a tree preservation order prior to it being made to ensure that the trees are not felled beforehand.
- iii) The trees along Wellow Brook contribute towards green infrastructure links which extend far beyond the application site boundary but were, as the objector points out, outside of the red line boundary submitted as part of the planning application. The Alders were within the red line boundary.
- iv) The outline application was for five houses and an outline plan had been submitted showing the limited space available within the red line boundary to accommodate five dwellings. This implicated all trees to the rear of 36 and 44 Vivien Avenue without demonstrating due consideration of their condition, value or contribution. The TPO was made to ensure that the trees were not felled without due consideration being given to them. It was not expedient to make the TPO prior to the planning application because there was no known threat.
- v) Wessex Water is responsible for the public sewer crossing the land. Wessex Water advised that the sewer depth within the vicinity of the Alders is 2.2m. The majority of tree roots are usually within the top 60 – 90cm of soil so are unlikely to cause damage to the pipes.

4.10 Midsomer Norton Town Council supports the TPO. Three letters and eight e-mails have been received from local residents in support of the TPO.

#### **4.11 Relevant History**

4.12 13/00288/OUT – application for the erection of five dwellings – REFUSED

### **5.0 LEGAL AND POLICY FRAMEWORK**

#### Tree Preservation Order

5.1 A tree preservation order is an order made by a local planning authority in respect of trees and woodlands. The principal effect of a tree preservation order is to prohibit the:

Cutting down, uprooting, topping, lopping, wilful damage or wilful destruction of trees without the council's consent.

5.2 The law on tree preservation orders is in the Town and Country Planning Act 1990 and in the Town and Country Planning (Tree Preservation) (England) Regulations 2012 which came into effect on 6<sup>th</sup> April 2012 .

5.3 A local planning authority may make a tree preservation order if it appears

“Expedient in the interests of amenity to make provision for the preservation of trees or woodlands in their area”

5.4 The Council's Arboricultural Officers have a written method for assessing the 'Amenity' of trees and woodlands considered to be under threat. This is in keeping with Government guidance, and takes account of the visual impact of trees and their contribution to the landscape, their general overall health and condition, their longevity and their possible or likely impact on services and property.

5.5 This assessment concluded, having taken account of, visual amenity, tree health considerations and impact considerations, that it would be expedient in the interest of amenity to make provision for the preservation of the trees. The TPO was made on 21<sup>st</sup> February 2013 and took effect immediately and continues in force for a period of six months.

#### Planning Policy

5.6 Bath and North East Somerset Local Plan including minerals & waste policies 2007

C2.22 'Trees are an important part of our natural life support system: they have a vital role to play in the sustainability of our urban and rural areas. They benefit:

- the local economy – creating potential for employment, encouraging inward investment, bringing in tourism and adding value to property;

- the local environment by reducing the effects of air pollution and storm water run off, reducing energy consumption through moderation of the local climate, and providing a wide range of wildlife habitats;
- the social fabric in terms of recreation and education'

C2.23 'Much of the tree cover in the urban areas is in a critical condition and there is little or no replacement planting for over-mature trees in decline. Infill development has often reduced the space available for planting large tree species. In addition, new tree planting takes many years to mature. The management and retention of significant trees is therefore pressing'

C2.25 'Bath & North East Somerset has a duty under the Town and Country Planning Act 1990 to ensure tree and woodland preservation wherever it is appropriate. The Council will continue to protect trees and woodlands through Tree Preservation Orders (TPOs) as appropriate. There is also a level of protection afforded to trees in Conservation Areas (CAs). However there are many trees of value outside these designations and careful consideration should be given to the removal of any tree'

## 6. CONCLUSION

- 6.1 The trees contribute towards the local visual amenity and are valued by local residents and the Town Council.
- 6.2 Confirmation of the TPO would ensure the retention of the trees, however, an application supported by sound arboricultural reasons for pruning or felling as the need arose in the future can be made under the TPO. The Council will then be able to condition the quality of the workmanship and appropriate replacement planting if considered appropriate.
- 6.3 In keeping with the Council's commitment to conserve and enhance the environment, it is recommended that the Committee confirm the TPO without modification.

<b>Contact person</b>	Jane Brewer 01225 477505
<b>Background papers</b>	The provisional Tree Preservation Order documentation and correspondence can be viewed by contacting Jane Brewer on the above telephone number.