

WAVERLEY BOROUGH COUNCIL
EASTERN AREA PLANNING COMMITTEE
17 MAY 2017

Title:

**OBJECTION TO TREE PRESERVATION ORDER (NO. 01/2017)
– TREES ON LAND BETWEEN ALFOLD ROAD AND KNOWLE LANE,
CRANLEIGH**

**[Portfolio Holder: Brian Adams]
[Ward Affected: Cranleigh West]**

Summary and purpose:

To consider an objection to the making of a Tree Preservation Order (TPO) and to determine whether the Order should be confirmed, with or without modification.

How this report relates to the Council's Corporate Priorities:

Environment – The Council is committed to protecting and enhancing the Borough's landscapes. There are environmental benefits in retaining trees which merit special protection.

Financial implications:

The confirmation of the TPO has a resource implication for the processing of tree works applications in the future.

Legal implications:

Legal implications are covered under human rights implications.

Background

Tree Preservation Order (TPO) 01/2017 was made on 10th February 2017.

It affords protection to three sections of woodland, twenty eight individual trees and seven groups of trees which range in size from three trees to twenty five trees. The woodland includes the remaining area of Knowle Wood, a designated Ancient Woodland. The trees and groups of trees are a mix of indigenous species growing in the hedgerows of the historic field pattern and planted park land trees on the edge of the Knowle Park estate.

The trees and woodland are situated on fields on and adjacent to the permitted outline planning permissions for access only to the Land South of the High Street between Alfold Road and Knowle Lane (ref: WA/2014/0912) and the site known as Little Meadow, Alfold Road (ref: WA/2015/0478).

In accordance with saved Policy D6 of the Waverley Borough Local Plan 2002 and the Council's adopted Tree Guidelines (2012), the Council will protect significant

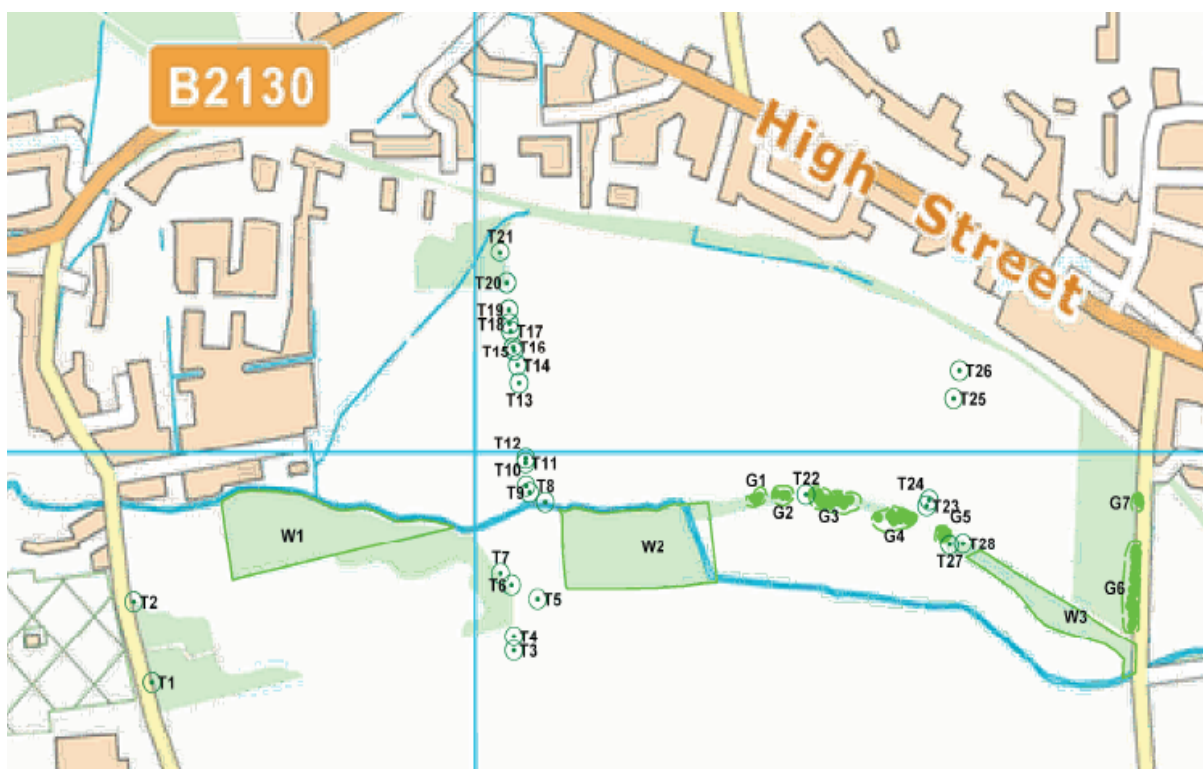
trees and groups of trees by using Tree Preservation Orders. In doing so the Council will have regard to:

- a) the condition of the trees
- b) their contribution to the public amenity of the area including appropriateness of the trees to their surroundings and the amount of tree cover in the area
- c) the historical significance of the trees and/or rarity of the species

The Council will encourage good management of important trees and groups of trees. Where work is proposed to protected trees or groups of trees the Council will take account of public safety and the retention of amenity, historic and wildlife value. Where appropriate, new tree planting will be required.

Under section 198 of the Town and Country Planning Act (1990) the Local Planning Authority has powers to make trees subject of preservation orders in the interests of amenity when the threat or loss of such trees may result in a negative effect to the character of the local landscape.

It was deemed expedient to place a TPO on the trees and woodland to safeguard them by exercising a level of control over development activity on the site and to ensure that any future work to fell or prune trees retained within the site is duly considered in relation to impact on both tree health and public amenity. The order has been made in recognition of the contribution of the trees to the visual amenity and character of the landscape.



Location of Trees and Woodland subject of TPO 01/2017

Objection

The objection has been received from Mr Max Gaulton, the Development Manager for Berkeley Homes whom are the developer connected with the Land South of the High Street between Alfold Road and Knowle Lane. The objection is on the following basis (full details of correspondence received forms appendix 1):

- that the TPO is unnecessary as outline parameter plans, along with LPA control of reserved matters submissions sufficiently protect the remaining trees on the site and they are not therefore under threat;
- that the TPO puts up a potential significant further barrier to delivery of the development;
- that numerous tree work applications will likely be required across the development life cycle, causing unnecessary delay in scheme delivery;
- specifically that 5 individual trees, two tree groups and an area of woodland (Knowle Wood Ancient Woodland) may require works within minimum root protection zones (as defined by British standard 5837:2012 Trees in relation to design, demolition and construction – Recommendations), to enable accommodation of access roads, footpaths and plot boundaries.

Officers' response

The Town and Country Planning Act 1990 places a duty on the local planning authority that *'if it appears expedient in the interests of amenity to make provision for the preservation of trees or woodlands in their area'*. The Act does not define 'amenity' however, it is generally accepted that this appears to mean *'the quality of being pleasant or agreeable'*.

The duty for planning permission to include appropriate provision for preservation of and planting of trees also requires the Local Planning Authority to make TPO's *'as appear necessary in connection with the grant of such permission, whether for giving effect to conditions of the permission or otherwise'*.

In the case of the Berkeley's development, granted outline permission for access at appeal, there are very few trees that are internally located to the site that may require removal for a layout in accordance with the access roads and footpaths that have been approved.

Following the removal of trees shown on the approved parameter plan, all trees and woodland of fair form and condition that make a positive contribution to public visual amenity and that are recognised within supporting documentation as being viable for retention within an approved layout, have been included in the TPO. This includes trees outside of the land in Berkeley's control that are recognised as making a positive contribution to the future development.

It is envisaged that, in accordance with recognised good practice in relation to design and construction near trees, each reserved matters application submitted to broach the requirements of the three phases of the development will include an assessment

of the impacts on trees originally recognised for retention and details of works required to implement.

Tree works necessary and agreed to implement each planning permission may be undertaken under exception of the requirement to make a separate application in this respect. The tree works approved as part of this process will not therefore require any additional applications to be made.

The majority of the specific issues raised were specifically recognised and referred to within the arboricultural impact assessment (section 5 of the tree report) by Hankinson Duckett Associates submitted in support of the outline application for site development. The foreseeable requirements for engineering are highlighted in section 5.8 'Implications of changes in ground surfacing'.

It is appreciated that the detail of construction requires review at the technical design stage. The principle of limited impact is acknowledged and should not be a barrier to development.

The requirement to install plot boundary fencing within the root protection areas of trees within TPO Group G7 (point 7) is not considered to foreseeably have significant impact on the trees and can be reasonably controlled by adherence to an appropriate Arboricultural Method Statement that will be required for this phase of development implementation.

The TPO does not alter the duty of care owed to third parties by tree owners as laid out in the Occupiers Liability Acts (1957 & 1984). If adequate evidence were presented to the Council that any trees present an unreasonable level of risk to people or property then the Council would not unreasonably withhold consent for works to remedy that situation.

The costs associated with undertaking tree work are not altered by the protection of a TPO. Consent to future applications for reasonable tree pruning in accordance with the relevant recognised industry standard (BS3998: 2010 Tree work – Recommendations) would not be unreasonably withheld.

Human Rights Implications

In deciding to confirm the Order, the Council must have regard to the protection of human rights of the objector and others affected by the decision.

The rights of the European Convention affected by the decision arise from:

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Article 8 - protection of the right to respect for one's private and family life, home and correspondence.

Relevant to the objection regarding a tree with roots and branches crossing the boundary of land within the objectors' ownership.

The decision recommended by Officers to confirm the Order will interfere with the rights of the objector otherwise protected by this Article. However, the interference is in accordance with the law and justified in the public interest to protect trees, which have an impact on the amenity of the area.

The existence of the TPO will not detract from the objector's legal rights at common law. This is to say that the objector will still be entitled to take any private law action if considered necessary. Confirmation of the Order will not fetter such private law rights. So although there maybe a justified interference with Article 8 and the right to peaceful enjoyment of property, any private law remedies will still be available to the objector.

The objectives of the Town and Country Planning Act 1990 are met by including measures that allow for the protection of trees. The preservation of trees is necessary to preserve the visual amenity of the area. The Order is necessary in furthering the legitimate aims of the Development Plan. To confirm the Order does not place a disproportionate burden on the tree owner or neighbour, who retain the right to make applications for works to trees. In these circumstances the confirmation of the Order is not considered to be an unjustified or disproportionate interference with the convention rights, and is the only action by which the Council may secure protection of the tree referred to.

Conclusion

It is your officers' view that the objections raised against the making of Tree Preservation Order 01/2017 are not substantiated and do not override the public amenity value presented by the trees and woodland and the Council's role in protection of these landscape elements in relation to new development.

Recommendation

It is recommended that the Tree Preservation Order 01/2017 applying to trees and woodland on land between Alfold Road and Knowle Lane, Cranleigh be confirmed without modification.

Background Papers

There are no background papers (as defined by Section 100D(5) of the Local Government Act 1972) relating to this report.

CONTACT OFFICER:

Name: ANDY CLOUT

Telephone: 01483 523309

E-mail: andy.clout@waverley.gov.uk

APPENDIX 1

- The Objection Letter and Associated Correspondence with Objector

Mr M Gaulton
Development Manager
Berkeley Homes (Southern) Limited
Bay Tree Avenue
Leatherhead
Surrey
KT22 7UE

Elizabeth Sims
Head of Planning Services

When calling please ask for: Andy Clout

Direct line: 01483 523309

Calls may be recorded for training or monitoring

E-mail: andy.clout@waverley.gov.uk

Your ref:

Our ref: TPO 01/17

Date: 08 May 2017

Dear Mr Gaulton

Tree Preservation Order (TPO) No. 01 of 2017 Trees on Land Between Alfold Road and Knowle Lane, Cranleigh

I refer to your letter of objection addressed to Elizabeth Sims in regards to the above TPO which has been passed to me for comment on the points of contention raised.

Where relatively large greenfield developments are being approved in the Borough, in accordance with the Council's duty to make adequate provision for the preservation of trees and woodland we are acting expeditiously by making TPO's prior to works commencing on site, to safeguard the amenity of the area.

In the case of the Berkeley's development, there are very few trees that are internally located to the site that may require removal for a layout in accordance with the access roads that have been approved.

All trees and woodland of fair form and condition that make a positive contribution to public visual amenity and that are recognised within supporting documentation as being viable for retention within an approved layout, have been included in the TPO. This includes trees outside of the land in Berkeley's control that are recognised as making a positive contribution to the future development.

It is envisaged that, in accordance with recognised good practice in relation to design and construction near trees, each reserved matters application submitted to broach the requirements of the three phases of the development will include an assessment of the impacts on trees originally recognised for retention and details of works required to implement.

As you have highlighted, tree works necessary and agreed to implement each planning permission may be undertaken under exception of the requirement to make a separate application in this respect. The tree works approved as part of this process will not therefore require any additional applications to be made.

In response to the points 1 – 8 that you have raised, the majority of these issues were specifically recognised and referred to within the arboricultural impact assessment (section 5 of the tree report) by Hankinson Duckett Associates submitted in support of the outline application for access, that was allowed on appeal.

The foreseeable requirements for engineering referred to in your points 1 – 6 and 8 were highlighted in section 5.8 Implications of changes in ground surfacing.

This section of the report states that any construction within the root protection areas of trees identified should be subject to a no-dig construction methodology preventing any loss of rooting medium. This approach is consistent with the relevant British Standard 5837 :2012 Trees in relation to design, demolition and construction – Recommendations.

It is appreciated that the detail of construction requires review at the technical design stage. The principle of limited impact is acknowledged and should not be a barrier to development.

The requirement to install plot boundary fencing within the root protection areas of trees within TPO Group G7 (point 7) is not considered to foreseeably have significant impact on the trees and can be reasonably controlled by adherence to an appropriate Arboricultural Method Statement that will be required for this phase of development implementation.

I can confirm that the revised details submitted under phase 1 of the reserved matters application (WA/2016/2160) have been distributed to all relevant consultees for comment. I will be responding to the case officer, Jen Samuelson, in due course on tree and landscape specifics.

Discussion between any person making an objection is encouraged and I hope the above addresses your objection.

If you wish to maintain an objection to the TPO please confirm this in writing. Should Officers decide to confirm the Order in its present form a report will then be prepared together with your objection and placed before the relevant Planning Committee, who will decide whether or not the TPO should be confirmed.

Yours sincerely

Andy Clout
Landscape and Tree Officer

Ms E Sims
Head of Planning Services
Waverley Borough Council
Council Offices
The Burys
Godalming
Surrey
GU7 1HR

24 February 2017

Dear Ms Sims,

Waverley Borough Council Tree Preservation Order – 01/17 (Cranleigh)

Further to your letter of 10 February 2017, addressed to Berkeley Strategic Land Limited (enclosed), I am writing to object, on behalf of Berkeley, to Tree Preservation Order (TPO) 01/17, dated 10 February 2017, which relates (in part) to trees situated on land owned by Berkeley, lying between Alfold Road and Knowle Lane, Cranleigh. The land has the benefit of outline planning permission (ref: WA/2014/0912, as replaced by WA/2016/1625).

Prior to the issue of TPO 01/17, there were only 3 oak trees deemed to be worthy of a TPO on the entire landholding, protected under TPO 07/85. These oak trees overhang Berkeley land.

Firstly, as a general comment, I attended a Developer's Meeting at Waverley Borough Council (WBC) offices on 7 February 2017, chaired by Julia Potts, Leader of the Council, at which it was stated that WBC were looking to work with developers towards the delivery of housing and were keen to understand barriers to delivery.

Whilst I understand that WBC would wish to protect key select strategic trees across the site in question, which Berkeley would support, the confirmation of a significant TPO across the site, puts up a potential significant further barrier to delivery of the development, before works have started in earnest.

I understand the purpose of a TPO to be to protect trees which bring significant amenity benefit, particularly where the trees are under threat.

Outline planning permission WA/2016/1625 approves a series of parameter plans. This includes Parameter Plan : Green Infrastructure (drawing no: 00734_PP06 Rev P1 - enclosed), which identifies a number of trees for removal, but also the requirement to retain the remaining green corridors currently present on site, which TPO 01/17 appears to target.

Following receipt of outline planning approval, reserved matters planning applications are required to be submitted by Berkeley, to WBC, for the various phases of development, to demonstrate,

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Registered Office: Berkeley House, 19 Portsmouth Road, Cobham, Surrey, KT11 1JG.



amongst other reserved matters items, how the detailed design of the scheme impacts upon the retained trees.

WBC, through consideration of Berkeley's reserved matters planning submissions, can ultimately decide whether to approve the relevant reserved matters planning application, or otherwise, including details on the protection, retention or removal of existing trees.

It is therefore considered that TPO 01/17 is unnecessary, as the approved outline parameter plans, along with WBC's control in determining the reserved matters planning submissions, sufficiently protect the remaining trees on the site and therefore suitable measures are already in place to ensure that the trees forming part of TPO 01/17, on Berkeley land, are not under threat.

I also note that Part 3 Section 14(vii) of the Town and Country Planning (Tree Preservation) Regulations 2012, confirm that work that is necessary to implement a planning permission, under Part III of the Town and Country Planning Act, is exempt from the described prohibited activities in any TPO.

More specifically, Berkeley objects to TPO 01/17 for the following reasons;

1. T2 (Ash) – works may be required within the root protection area of T2 to accommodate the continuous footpath, proposed by Surrey CC, along Alfold Road, between the Berkeley scheme and land to the immediate south, granted outline planning consent under reference WA/2015/0478, to provide safe access to local amenities for future residents.
2. T10 (Oak) – works may be required within the root protection zone of T10, to accommodate a main spine road on site, as approved under Parameter Plan : Movement & Access – Vehicular 00734_PP04 P1 (enclosed). The detailed scheme is yet to be designed.
3. T11 (Oak) – works may be required within the root protection zone of T11, to accommodate a main spine road on site, as approved under Parameter Plan : Movement & Access – Vehicular 00734_PP04 P1 (enclosed). The detailed scheme is yet to be designed.
4. T13 (Oak) - works will be required within the root protection zone of T13, to accommodate a pedestrian footpath link to future phases, between a gap in the hedgerow, to facilitate pedestrian permeability across the site. The detailed scheme is yet to be designed.
5. T20 (Oak) – works will be required within the root protection zone of T20, to accommodate a main spine road on site, as approved under Parameter Plan : Movement & Access – Vehicular 00734_PP04 P1 (enclosed).
6. Group G6 – works may be required within the root protection zones of trees within group G6, to facilitate the connection of a footpath link to the Downs Link, for pedestrian permeability through the site. Berkeley has recently submitted revised drawings under the Phase 1 reserved matters application (WA/2016/2160), following the receipt of consultation comments. The proposal for TPO 01/17 was not brought to Berkeley's attention by WBC, to allow Berkeley to

accommodate this in the design process, neither have any specific comments been provided by the Council's tree officer in relation to this current planning application.

7. Group G7 - works may be required within the root protection zones of trees within G7 to construct plot boundaries. As per the above comment on Group G6, Berkeley has recently submitted revised drawings under the Phase 1 reserved matters application (WA/2016/2160), following the receipt of consultation comments. The proposal for TPO 01/17 was not brought to Berkeley's attention by WBC, to allow Berkeley to accommodate this in the design process, neither have any specific comments been provided by the Council's tree officer in relation to this current planning application.
8. Group W1 – works may be required within the root protection zones of additional trees not already removed within Group W1 (more specifically trees T152, T154, T155, T158 & T169, as identified on Barrell Tree Protection Plan BT14 – enclosed) to facilitate the construction of an adoptable highway to serve the development site. Final detailed design requirements will be dictated by Surrey County Council, as highways authority and will need to be incorporated into the final designs.

To date, Berkeley has removed the trees on site approved at the outline stage, as necessary to facilitate the delivery of the scheme and in agreement with officers.

Berkeley is committed to delivery of the Cranleigh development, to a high quality, in a timely manner, to the benefit of local stakeholders.

Berkeley does not feel that the confirmation of this TPO is conducive to a positive working relationship between the parties and will likely require numerous TPO tree work applications across the development lifecycle, which is likely to cause unnecessary delays in the schemes delivery. This will also have associated cost and resource implications for both WBC and Berkeley, in managing the process.

I would be happy to discuss any of the above matters with you further and would be grateful to receive confirmation of the ongoing process and associated timeframes in the potential confirmation of TPO 01/17 by WBC, so that this can be monitored by Berkeley.

I look forward to hearing from you.

Yours sincerely,



Max Gaulton
Development Manager

Copy: Peter Cleveland (Development Control Manager) – e-mail only
Andy Clout (Landscape and Tree Officer) – e-mail only