



COMMITTEE REPORT

- LOCATION:** HASMONEAN HIGH SCHOOL, 2-4 PAGE STREET, LONDON, NW7 2EU and ADJACENT FIELDS CHAMPIONS WAY
- REFERENCE:** 17/TPO/003
- WARD:** Mill Hill
- PROPOSAL:** To seek authority for confirmation of Tree Preservation Order, without modification.
- RECOMMENDATION:**
1. That the Council, under Regulation 7 of the Town and Country Planning (Tree Preservation) (England) Regulations 2012 confirms the London Borough of Barnet Hasmane High School, 2-4 Page Street, London NW7 2EU and Adjacent Fields Champions Way Tree Preservation Order 2017 without modification.
 2. That the person(s) making representations be advised of the reasons.

1. MATERIAL CONSIDERATIONS

Relevant Planning Policies and Guidance Adopted

- Local Plan – Core Strategy (Adopted September 2012) – Policy CS7
- Local Plan – Development Management Policies (Adopted September 2012) – Policy DM01

Relevant Planning History

- Report of Planning Performance and Business Development Manager dated 30th January 2017
 - 16/6662/FUL – Hasmane High School 2 - 4 Page Street, London, NW7 2EU – Demolition of existing Girls school and construction of a new combined Boys and Girls school with vehicular access from Champions Way including 167 car parking spaces and 220 cycle parking spaces, three pedestrian accesses north, east and south of the site, along with associated landscaping (including swales), sports and recreational areas and ancillary buildings for energy centre and service yard, security gatehouse. School drop-off and pick-up space will be set out adjoining land
- The application was heard by members at the Planning Committee dated 22nd February 2017.

A vote was taken on the Officer's recommendation to REFUSE the application for the reasons detailed in the report:

- For (refusal) 5
- Against (refusal) 6
- Abstained 0

It was moved by Councillor Cohen and seconded by Councillor Greenspan that the application be APPROVED for the following reasons:

- RECOMMENDATION 1: The application being one of strategic importance to London and also due to its location within the Metropolitan Green Belt must be referred to the Mayor of London and the Secretary of State. As such any resolution by the committee will be subject to no direction to call in the application being received from the Mayor of London and the Secretary of State.
- RECOMMENDATION 2: Prior to submission to the Mayor and Secretary of State the conditions, S106 Heads of Terms and any informative attached to the planning permission be agreed by the Head of Strategic Planning in consultation with the Chairman.
- RECOMMENDATION 3: That subject to Recommendations 1 and 2, the Head of Strategic Planning approve the final planning application reference 16/6662/FUL under delegated powers.

Reasons for Approval

1. Members are of the view that if the playing fields did not actually form part of the application site the impact on loss of publicly accessible open space would be lessened. This could be covered by an informative.
2. Members are of the view that contrary to officer opinion there are indeed very special circumstances here to warrant exception to Green Belt policy.
 - (a) Operationally there is a need for the two schools to be conjoined the application is for one school.
 - (b) The applicants have made significant efforts to find other sites to accommodate both schools together over some 20 years without success.
3. The London Plan allows in Policy 7.18 that applicants can be required to improve the quality of a nearby area of open space at its own expense. Given the special circumstance of this proposal. LBB can require a significant monetary contribution to improve the quality of existing nearby open space.
4. London Plan allows in Policy 7.19 that applicants make appropriate compensation for the loss of biodiversity elsewhere in the Borough.
5. In relation to the trees taken out currently protected by a TPO Members are of the view that the applicant can provide additional tree planting of suitably mature species on the application site.

- For (approval) 7
- Against (approval) 3
- Abstained 1

RESOLVED that the application be APPROVED for the reasons detailed above.

Background Information/Officers Comments

The Town and Country Planning Act 1990 (as amended) at section 197 states:

“It shall be the duty of the local planning authority—

- (a) to ensure, whenever it is appropriate, that in granting planning permission for any development adequate provision is made, by the imposition of conditions, for the preservation or planting of trees; and
- (b) to make such orders under section 198 as appear to the authority to be necessary in connection with the grant of such permission, whether for giving effect to such conditions or otherwise.”

Section 198 of the Act empowers a local planning authority to make a Tree Preservation Order if it appears to be ‘expedient in the interests of amenity to make provision for the preservation of trees or woodlands in their area’.

National Planning Practice Guidance clarifies that:

“Authorities can either initiate this process themselves or in response to a request made by any other party. When deciding whether an Order is appropriate, authorities are advised to take into consideration what ‘amenity’ means in practice, what to take into account when assessing amenity value, what ‘expedient’ means in practice, what trees can be protected and how they can be identified.”

- The Guidance states that “‘Amenity’ is not defined in law, so authorities need to exercise judgment when deciding whether it is within their powers to make an Order. Orders should be used to protect selected trees and woodlands if their removal would have a significant negative impact on the local environment and its enjoyment by the public. Before authorities make or confirm an Order they should be able to show that protection would bring a reasonable degree of public benefit in the present or future.”
- The Guidance suggests the following criteria should be taken into account: “*Visibility* - The extent to which the trees or woodlands can be seen by the public will inform the authority’s assessment of whether the impact on the local environment is significant. The trees, or at least part of them, should normally be visible from a public place, such as a road or footpath, or accessible by the public. *Individual, collective and wider impact* - Public visibility alone will not be sufficient to warrant an Order. The authority is advised to also assess the particular importance of an individual tree, of groups of trees or of woodlands by reference to its or their characteristics including:
 - size and form;
 - future potential as an amenity;
 - rarity, cultural or historic value;
 - contribution to, and relationship with, the landscape; and
 - contribution to the character or appearance of a conservation area.
- In terms of expediency, the Guidance notes “It may be expedient to make an Order if the authority believes there is a risk of trees being felled,

pruned or damaged in ways which would have a significant impact on the amenity of the area. But it is not necessary for there to be immediate risk for there to be a need to protect trees. In some cases the authority may believe that certain trees are at risk as a result of development pressures and may consider, where this is in the interests of amenity, that it is expedient to make an Order. Authorities can also consider other sources of risks to trees with significant amenity value. For example, changes in property ownership and intentions to fell trees are not always known in advance, so it may sometimes be appropriate to proactively make Orders as a precaution.”

“When granting planning permission authorities have a duty to ensure, whenever appropriate, that planning conditions are used to provide for tree preservation and planting. Orders should be made in respect of trees where it appears necessary in connection with the grant of permission.”

A Tree Preservation Order was made on 1st February 2017 in the interest of public amenity in the light of a planning application for redevelopment at the site (16/6662/FUL). The making of the Order was considered justifiable both on grounds of amenity and expediency. As set out below, the trees are considered to be of significant public amenity value – visually and environmentally.

An “Arboricultural Assessment and Method Statement Hasmonian Boys’ and Girls’ School, Hendon and Mill Hill, Barnet, London” by Andy Sherlock of Barrell Tree Consultancy dated 2nd September 2016 was submitted with application 16/6662/FUL. This Arboricultural Report includes a survey of the trees at and immediately adjacent to the application site (the current Hasmonian High School site and three fields which are owned by the Local Authority to the east, south-east and south of the current school site). The survey schedule included details of 44 individual and 30 groups of trees, plus 3 woodlands – comprising 20 different species and ranging in age from young to mature.

The arboricultural survey included within the Arboricultural Assessment and Method Statement indicates that there are a number of good quality individual and groups of trees at the site (most of the surveyed trees are classified as A or B in accordance with the cascade chart for tree quality assessment recommended by the British Standard BS5837:2012 *Trees in relation to design, demolition and construction – Recommendations*).

The Arboricultural Assessment and Method Statement report indicates that a large number of trees would need to be removed to accommodate the new school subject of the application.

The development proposal was reviewed by an Arboricultural Consultant employed by RE Ltd to assess the arboricultural aspects of the application on behalf of the Planning Department. In his comments the Arboricultural Consultant acting on behalf of the Planning Department recommended that the application be refused *“on the grounds of unacceptable loss of valuable trees, visual tree amenity, wildlife habitat and open space.”* He also commented that *“A large number of valuable trees will be removed to achieve this development that will have a significant negative impact on local visual tree amenity, wildlife habitat and public open space that is unacceptable,”* also *“there are a large number of mature and over mature oak trees to be removed which are irreplaceable.”* Given his

concerns about loss of trees as part of the development proposals the Arboricultural Consultant acting on behalf of the Planning Department requested that consideration be given to the making of a Tree Preservation Order.

Officers in the Major Projects Team (who dealt with the planning application); CSG Estates (responsible for the administration of Council owned property); and the Council's Greenspaces and Streets Team (who have responsibility for Council owned/maintained Trees and currently maintain the trees in the three Council owned fields adjacent to the existing school site) supported the making of a Tree Preservation Order at the site.

There were many representations from members of the public in respect of the development scheme (both in support of and objection to the scheme). Many of those who objected referred to the loss of green space and detriment to the environment and local wildlife.

The three Council owned fields that form part of the development site are collectively known as the Copthall South Fields and are a site of local importance for nature conservation. In Nature Conservation in Barnet Ecology Handbook 28, by Hewlett et al, published by the London Ecology Unit 1997 it is stated that: *"This small group of fields, close to the pounding traffic on the A1 road in Hendon, has a surprisingly rural quality. It belongs to Barnet Council and is part of the Copthall Playing Fields complex, although it is screened off from the sports pitches by tall hedges. These hedgerows contain a good diversity of species typical of old form hedges in Barnet, and are undoubtedly relics from agricultural days. Mature oak, ash and field maple are present, together with Midland and common hawthorns, blackthorn, grey willow...several other hedges, some with associated damp ditches which provide another element of wildlife habitat, divide the fields one from another...In the northern field a plantation of mostly native trees including oak, silver birch, wild cherry, willows, pine and larch has recently been created under the Watling Chase Community Forest initiative...This site is of value in providing a pocket of countryside "at their doorstep" for people in this rather densely built up, traffic ridden part of the Borough...Free public access is available from a kissing gate in Page Street and from the public footpath on Copthall Playing Fields."*

There are a number of high quality mature and maturing trees and woodland blocks on the development site which contribute to public amenity helping to soften the urban appearance of this *"rather densely built up, traffic ridden part of the Borough"* when viewed from the adjacent roadways and from within the Council owned fields – which at present have free public access. These trees are capable of contributing to public amenity for a number of decades. It should also be noted that the amenity value of the maturing trees is likely to increase as they age – especially the plantation created under the Watling Chase Community Forest initiative. The trees are important to the site of local importance for nature conservation providing habitat for local wildlife and in many cases denoting the boundaries of the fields (along with the hedges mentioned in the Ecology Handbook).

Given the quality of the trees at this site, the contribution that they make to public amenity and the significant concerns about tree loss/damage as part of development proposals subject of application 16/6662/FUL it was considered both appropriate in the interests of amenity and expedient to include the trees in a new Tree Preservation Order. This would render the trees a material consideration for application 16/6662/FUL (and any future planning applications) as well as lend force to any tree protection conditions in the event of a planning approval.

The majority of the trees are of a good quality and make a significant contribution to public amenity – either individually, or as part of a wider group or woodland block. Because the trees that are of lesser quality are so interspersed with those of good quality, it was considered appropriate to make an Area designated Tree Preservation Order to include all of the trees. For ease of identification on site, the boundaries of the Area aligned with the red line of the planning application site (excluding the small triangular car park to the north), slightly adjusted where necessary to correspond with fence-lines and pathways actually on the ground. The Area Tree Preservation Order would also mean that the protected trees would have a range of ages allowing for public amenity to be maintained in the longer term – as, with time, the younger trees will mature and make an increased contribution to amenity helping to mitigate against any natural loss of old trees.

Notices were served on the persons affected by the Order in accordance with paragraph 1(a) of Regulation 5 of the Town and Country Planning (Tree Preservation) (England) Regulations.

The Tree Preservation Order secures the protection of the tree on a provisional basis for up to six months from the date of making, but an Order needs to be formally confirmed for it to have long-term effect. The Council is required to take into account all duly made objections and representations before deciding whether to confirm the TPO.

The following representation was received from a local resident in support of the Tree Preservation Order:

- “I have received a copy of the TPO through my letter box, which is good to see, thank you for acting so swiftly, I assume you are aware of the planning application to build on this site.

Comments on the Formal Notice pages of the TPO say what we as residents here all feel - they 'contribute to the character and scenic interest of the area', and its destruction would be a terrible loss for residents of Barnet.”

A letter of representation objecting to the Tree Preservation Order has been received from a firm of Solicitors acting on behalf of Hasmonian High School. The representation on behalf of the school can be summarised as:

- The Council’s Planning Committee resolved on 22nd February 2017 to grant permission for application 16/6662/FUL. “The draft minutes for that meeting state that *“In relation to the trees taken out currently protected by a TPO members are of the view that the applicant can provide additional tree planting of suitably mature species on the application site.”*
- “Regulation 14(1)(a)(vii) of the Town and Country Planning (Tree Preservation) (England) Regulations 2012 states that prohibited activities should not apply to *“so far as such work is necessary to implement a planning permission.”*
- “It would be entirely unnecessary and inappropriate for the TPO to be confirmed – the Council is in the process of granting permission for the redevelopment of the

School (and such permission will override the TPO), and members clearly considered the impact on the relevant trees when making their decision.”

- Application 16/6662/FUL was accompanied by a full environmental statement which included an arboricultural assessment of the trees at the school. “The assessment concluded that, subject to adequate precautionary measures. *“the development proposal will only have a limited impact on the contribution of trees to character in the wider setting. Indeed the new sustainable planting proposals will increase the potential of the site to contribute to local character well beyond the short term.”*”
- “Despite our repeated requests, the Council has failed to provide any details as to why they disagree with this assessment, or indeed a full justification for making the TPO in the first instance.”
- “We therefore remain of the view, as stated by members, that the amenity of the area will be preserved by the development.”
- “In order for the School to be able to manage its property, it will need to be able to carry out appropriate works to trees on site where necessary. It is unnecessarily cumbersome for the School to be forced to apply to the Council whenever such works are proposed.”

In response the Council's Tree and Environment Officer comments as follows:

- (i) The representation in support suggests that residents, too, consider that the trees have high public amenity value and their “destruction would be a terrible loss for residents of Barnet.”
- (ii) The confirmation of the Tree Preservation Order and assessment of planning application for redevelopment are separate procedures. Confirmation of the Order would render the trees an ongoing material consideration in any planning application - the merit of trees and appropriateness of retention would be taken into account when assessing the planning application(s).
- (iii) Notwithstanding Members’ recommendation in respect of the planning application for redevelopment 16/6662/FUL, as the application is one of strategic importance to London and the site is located within the Metropolitan Green Belt, it must be referred to the Mayor of London and the Secretary of State. The referral to the Mayor is still in process – it could take a considerable period and there is no certainty as to the outcome. In accordance with TPO legislation, a provisional Order lapses if it is not confirmed within six months of being made. As the referral process may extend beyond the six months period, the decision whether or not to confirm the Order needs to be made independently of the timing of the planning application.
- (iv) It is inaccurate to suggest that ‘permission will override the TPO’. Whilst the TPO legislation may provide an exemption for treeworks necessary to implement a planning permission, this would only extend “so far as such work is necessary” – however, it would not encompass treeworks that might

facilitate but not be necessary (e.g. to provide temporary access for construction). Confirmation of the Tree Preservation Order would allow the imposition of conditions for the preservation and planting of trees ('adequate precautionary measures' and 'new sustainable planting proposals') should development occur.

- (v) As noted above, the submitted Barrell Tree Consultancy arboricultural assessment itself indicates that there are a number of good quality individual and groups of trees at the site (most classified as BS5837 category A or B), and also that a large number of trees would need to be removed to accommodate the new school. Council Officers agree with this assessment and requested / supported the making of the Tree Preservation Order, believing it to be 'expedient in the interests of amenity to make provision for the preservation of trees or woodlands in their area'.
- (vi) Officers do not consider that the amenity of the area will be preserved by the proposed development:
 - As indicated above, the Arboricultural Consultant advising the Planning Department noted that "A large number of valuable trees will be removed to achieve this development that will have a significant negative impact on local visual tree amenity, wildlife habitat and public open space that is unacceptable," also "there are a large number of mature and over mature oak trees to be removed which are irreplaceable."
 - In May 2017, Greenspaces Arboricultural Officers undertook a survey of 48 trees in the three Council fields (Copthall South Fields) that were closest to the school site and likely to be affected by the redevelopment. They identified the trees - mainly Oak, with some Field Maple and Ash - to have a CAVAT valuation of almost £1.3 million (£1,298,875), (the two highest individually valued trees being £181,867 and £111,094).
- (vii) The contention that the Tree Preservation Order should not be confirmed because "It is unnecessarily cumbersome for the School to be forced to apply to the Council whenever [treeworks] are proposed" is considered unreasonable. There are some 700 TPOs in the borough, ranging in size from individual to thousands of trees – including Orders on large school and college sites (e.g. Mill Hill School, Oakhill College, The Sternberg Centre and associated buildings at 80 East End Road); churchyards (e.g. St Mary at Finchley, St Mary the Virgin Barnet, and Holy Trinity East Finchley); cemeteries and crematoria (e.g. Mill Hill, East Finchley and Golders Green); historic ornamental grounds (e.g. Avenue House and Grounds); and parkland (e.g. Windsor Open Space). TPO treework submissions are currently received from such diverse applicants as individual householders, estates bursars, churchwardens, and arboricultural agents, in addition, Greenspaces Arboricultural and CSG Estates Officers submit applications for works to TPO trees on Council owned / maintained land in accordance with legislation.
- (viii) If trees are unprotected, there would be no control over treatment – however, there is no reason to believe that consent would be refused for treatment in

accordance with good arboricultural practice (and, in any event, there is an appeal procedure as well as exemption provisions for e.g. removal of deadwood).

The letter of objection concludes “Please could you therefore provide written confirmation that the TPO will not be confirmed. Please note that, should the TPO be confirmed, the School reserves its right to formally challenge this decision by way of judicial review, based on the Council’s unreasonable behaviour in ignoring the resolution to grant planning permission, and its failure to properly justify the making of a TPO.”

It should be noted that there have been a number of requests for information from the firm of Solicitors acting on behalf of Hasmonian High School – some of which appear to demonstrate confusion about, and conflation of, the separate procedures for making Tree Preservation Orders (in accordance with s198 of Act and the Town & Country Planning (Tree Preservation) (England) Regulations 2012) and the determination of the redevelopment application. In addition to more general replies, extensive correspondence and documents were sent in response to a formal ‘Freedom of Information’ request.

It is considered that the making of the Order fully accords with the duty imposed on the Council as local planning authority as being ‘expedient in the interests of amenity to make provision for the preservation of trees or woodlands in their area’. Notwithstanding Members’ recommendation, the planning application must be referred to the Mayor of London and the Secretary of State. The referral to the Mayor is still in process – it could take a considerable period and there is no certainty as to the outcome. In accordance with TPO legislation, a provisional Order lapses if it is not confirmed within six months of being made. As the referral process may extend beyond the six months period, the decision whether or not to confirm the Order needs to be made independently of the timing of the planning application. Confirmation of the Tree Preservation Order would allow the imposition of conditions for the preservation and planting of trees if planning permission is granted for the redevelopment, and would provide some measure of control over inappropriate treeworks into the future.

2. EQUALITIES AND DIVERSITY ISSUES

The Equality Act 2010 (the Act) came into force in April 2011. The general duty on public bodies requires the Council to have due regard to the need to eliminate discrimination and promote equality in relation to those with protected characteristics such as race, disability, and gender including gender reassignment, religion or belief, sex, pregnancy or maternity and foster good relations between different groups when discharging its functions.

The Council have considered the Act but do not believe that the confirmation of the Order would have a significant impact on any of the groups as noted in the Act.

3. CONCLUSION

The confirmation of the Tree Preservation Order is considered appropriate in the interests of public amenity and would allow the local planning authority some measure of control over treework that is considered excessive. As set out above, it is considered the trees within the boundary of area A1 identified in the Order contribute significantly to public

amenity and given normal arboricultural attention are capable of providing amenity value for a considerable time. It is therefore recommended that the Order be confirmed without modification.



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