



## COMMITTEE REPORT

- LOCATION:** NORTH MIDDLESEX GOLF CLUB, FRIERN BARNET LANE, LONDON, N20 0NL
- REFERENCE:** 17/TPO/013
- WARD:** Oakleigh
- 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 North Middlesex Golf Club, Friern Barnet Lane, London N20 0NL 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 Head of Development Management Planning (Development Management) dated 8<sup>th</sup> June 2017

#### Background Information/Officers Comments

Section 198 of the Town and Country Planning Act 1990 (as amended) 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.”

A Tree Preservation Order was made on 27<sup>th</sup> October 2017 in the interest of public amenity following a request from a local resident. 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.

The North Middlesex Golf Course is situated on land which is owned by the Council – but is held by the Golf Club on a 125 year lease.

It may be noted that 2 individually designated trees (an Oak and an Ash) together with a group of 39 Lombardy Poplar trees adjacent to the Friary Road frontage of the site are already included within The London Borough of Barnet (North Middlesex Golf Course, N20) Tree Preservation Order 1998. This Order was made in connection with a proposal to erect fencing immediately adjacent.

The resident’s request related to a specific mature Oak standing immediately to the rear of her property. The request was discussed with the relevant Officer in the CSG Estates / Property Services team - as was the wider matter of assessing trees on a piecemeal basis,

in response to individual householder requests / planning applications and the potential merits in considering the trees at the site as a whole. CSG Estates / Property Services suggested that, rather than consideration of the trees on a piecemeal ad hoc basis, support would be given to the inclusion of all trees on the North Middlesex Golf Course within a new Tree Preservation Order. It was agreed that this approach would (i) provide greater clarity; (ii) give the local authority greater control over treatment of the trees (not provided under the terms of the lease); and (iii) allow for consideration of the trees in the context of the wider site.

The land now known as North Middlesex Golf Course was originally part of Manor Farm and formed parkland surrounding the enlarged farmhouse which became called “The Manor House”. The Golf Course Club House, the Victorian “Manor House” and its outbuildings are Locally Listed Buildings. British History Online suggests that the House was built and extended by John Miles who bought the land in 1851 and subsequently purchased more. (Adjacent to the south western site boundary is 50 Finchley Park - with two prominent Cedars included in a separate Order made in 1972 - which appears to have been constructed as an ornamental entrance lodge to the parkland).

There are a number of high quality mature and maturing trees, groups of trees and woodland blocks growing on the site of the North Middlesex Golf Course that are visible from the surrounding roadways above and between houses and also from the adjacent properties and which contribute significantly to public amenity. Many of the more mature trees were part of the ornamental parkland and some date from even earlier agricultural field boundaries.

In addition, a number of the trees contribute significantly to public amenity by helping to provide a strong planted boundary between the North Middlesex Golf Course and adjacent residential properties – this planted boundary helps to screen and soften the built form of the residential properties and is of benefit to the golf course, the adjacent residential properties and the general public by providing a visually attractive setting that enhances the appearance of the surrounding area.

The trees are also of ecological and environmental benefit – proving habitat for a variety of wildlife and helping filter air-borne pollutants, moderating rainfall infiltration, and contributing to climate change mitigation.

Whilst there are a few trees of lesser quality at the Golf Course site, the majority of the trees are of a good quality and make a significant contribution to public amenity – individually, or as part of a wider group, or woodland block. In some cases, groups comprise trees in varying conditions which together form an integral unit – both visually and in terms of mutual structural support – so the collective value provides a greater contribution to public amenity than the individual trees. Because the trees that are of lesser quality are so interspersed with those of good quality, when the site is considered as a whole it would be far from straightforward to exclude them from an individually and group designated Tree Preservation Order. Consequently it is considered appropriate to make an Area designated Tree Preservation Order covering the whole of the Golf Course site. The making of an Area Order would also mean that the protected trees would have a variety of age ranges 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.

With normal cultural attention, the trees are capable of contributing to public amenity for a number of decades.

Given the quality of the trees at this site and the contribution that they make to public amenity, the trees were included in a Tree Preservation Order.

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 representations were received from local residents in support of the Tree Preservation Order:

- “Thank you for your letter of 27<sup>th</sup> October which we were delighted to receive especially in light of how grossly overdeveloped North Finchley has become under Barnet Council.”
- “I am delighted that there is a preservation order in place and wish to see more greener areas in Finchley and fewer concrete monsters i.e. blocks of flats.”
- “We genuinely welcome the proposed TPO under the proviso that the order not only prevents indiscriminate cutting actions by the owners or indeed anyone, but that it carries with it the onus upon the tree owners to regularly inspect the trees for routine maintenance, dangerous overgrowth extending over private property and dead trees.”
- “We are more than happy for the trees to be protected and preserved, but it must work both ways, the owners must be responsible for regular attention to the trees and Barnet Council having introduced a TPO have a duty of care to ensure the owners have a regular and properly recorded maintenance programme which we would be pleased to be able to view at your convenience.”

Various e-mails and letters of representation objecting to the Tree Preservation Order have been received from residents of 5 properties adjacent to the Golf Course (some residents sending multiple correspondence). The grounds of objection raised in the representations are as follows:

- “You will be aware that several neighbours .... wrote to the North Middlesex Golf Club and subsequently met with .... General Manager of the Golf Club on 18<sup>th</sup> October to express serious concerns with regard to the trees which overhang onto our private road and gardens and their potential threat to life and property. [He] stated that the Club’s Arborists had identified several trees which were dangerous and made a commitment to address this danger before Christmas.”
- “You may or may not be aware that in a recent storm part of one tree fell and damaged our neighbour’s garage. Since then I and ....other householders affected by the grossly overgrown trees have been in negotiations with the Golf Club who [in the middle of October 2017] agreed to attend the trees through their arborist. Can

you confirm why the council have suddenly decided a preservation order is necessary as it seems a strange coincidence that after living here for 32 years and never have seen anyone attempting to maintain the trees, after we now have the owners agreeing to some much needed work they now need permission. Has the club requested the council to pursue this order?"

- "I thought part of your responsibility in issuing a preservation order is to ensure that organisations such as The North Middlesex Golf Club work within that order. [The General Manager of the Golf Club] has identified trees which present a danger and said at a meeting that sensible measures would be undertaken to remove any threat to life and property before the end of the year."
- "Barnet Council and North Middlesex Golf Club are aware of this imposing threat and we implore you to take immediate action to safeguard the lives and homes as outlined above. Failure to do so would be an admission of negligence."
- "As our local authority working with The North Middlesex Golf Club you have a legal duty of care to ensure these trees are responsibly managed. .... We believe our requests are reasonable in that we wish to protect the lives of those living in .....; visitors to our properties and indeed our properties."
- "When we moved here [a considerable time ago] the golf course was well kept and the grounds always immaculate, however in the past few years the standard of care has declined and is now resulting in damage to my own trees and hedgerow...due to competition for water and light....We would both like to register our dismay at the ongoing situation of neglect at the back of our property, we have both contacted the golf course over the years about this neglected area on separate occasions and were both met with intransigence and rudeness. We would like to have the area restored to its original condition before I can consider replacing my hedge."
- "We have been in regularly contact with North Middlesex Golf Club over the course of years....but with this TPO you are giving them licence to let tree grow without any maintenance causing damage to our property."
- "We have been in correspondence with the golf course as the trees are now overgrown and need to be cut back "but as usual nothing". "Twice we have been to court and Barnet council and the Golf course were held responsible for not maintaining the trees and causing damage to our home."
- "Our property has suffered subsidence. The trees near my property are supposed to be maintained to stop any further subsidence. Who is going to be in charge to make sure this does not happen again?"
- "We are going to take legal advice regarding compensation for loss or damage under government guidance TPO conservation areas if any further damage to our property."
- "We are concerned that by imposing a TPO we will be unable to cut back branches causing further direct damage to our property as the trees are very close to our property."

- “Imposing a TPO places undue hurdles in our way by determining how best to respond to the challenges imposed by the trees.”
- “We do not agree that the council should have the last say in determining whether future damage is acceptable or not or indeed whether requests to prune the tree to overcome other concerns, such as the tree being deemed overbearing, should fall to the discretion of the council.”
- “We fail to see how small trees that grow over into my garden and side of the property has any significant amenity benefit to the local area, they are not visible from the road. The trees have to be maintained every week as the tree branches and leaves over grow and fall through the fence and we have no light into our garden and property, they effected out satellite dish which we had to move higher, the green flies that live on the leaves in the summer destroys garden plants and almost non-accessible for us to enjoy the garden.”
- “I would like to also mention that the horse chestnut tree is also diseased, and also we would like to know why a preservation order is necessary for the trees next to my fence, those trees are just normal trees, not too big these are the trees that have to have the branches cut back every year as they come through the fence from the golf course to our garden causing black flies and insects. Also if they grow to quickly blocks out the sun from our garden!”
- “Who is respons[ibl]e for all the branches that will coming throw and over the fence onto my property blocking out sun?”
- “TPO should not be for these trees, we do understand you want to keep more mature trees, but they must be maintained by your leaseholders.”
- “For the reasons given we do not consider that TPO should be placed on the trees that boarder our property unless we can maintain the trees from our side and the lease holder from their side of our garden boundary.”

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

- (i) The representations in support suggest that residents, too, consider that the trees have high public amenity value.
- (ii) There is, however, some misunderstanding of the legislative provisions relating to the Tree Preservation Order. The inclusion of trees in an Order would not transfer responsibility for the responsible management of the trees from The North Middlesex Golf Club to the Council.
- (iii) The inclusion of the trees in an Order does not alter the responsibilities set out in the terms of the lease. Thus, as the lease specifies that the Golf Club is responsible for the maintenance of the trees, then the only change introduced by the Order is the requirement to obtain formal consent in accordance with tree preservation legislation before undertaking treeworks (in the same way as for treatment of any other tree(s) in Tree Preservation Orders throughout the borough).

- (iv) The inclusion of trees in an Order does not prevent treeworks being undertaken, but means that application(s) for consent for treatment of the designated trees need to be submitted in accordance with planning legislation. Each application would be considered on its merits on the basis of the information submitted at the time and there is no reason to believe that consent would be refused for treatment in accordance with good arboricultural practice.
- (v) The inclusion of trees in an Order does allow the Local Planning Authority (LPA) some measure of control over treatment – in that it can refuse pruning or felling which it considers inappropriate / excessive - but there is an appeal procedure if an applicant is aggrieved by the decision, as well as exemption provisions for e.g. removal of deadwood.
- (vi) However, these powers are reactive rather than pro-active – so whilst the LPA can now approve / refuse application(s); it cannot require that somebody submits an application, nor that any consented treework is implemented – i.e. the making / confirmation of the Tree Preservation Order does not provide the LPA with the right (power or duty) to insist that treework is carried out.
- (vii) The inclusion of trees in an Order does mean the LPA now has some enforcement powers so, if the Golf Club were to carry out treeworks without applying for the necessary consent it would be possible to consider prosecution - in that sense the LPA could ensure that they 'work within that order'.
- (viii) The inclusion of the trees in an Order should not make any material difference to the responsible management, regular inspection and maintenance in accordance with good arboricultural practice.
- (ix) It is inaccurate to suggest that the making / confirmation of a Tree Preservation Order introduces "a duty of care to ensure the owners have a regular and properly recorded maintenance programme".
- (x) Whilst it does appear, from some of the representations, that there has been a measure of concern about tree management and maintenance at the Golf Club in the recent past, this is unrelated to, and self-evidently pre-dates, the making / confirmation of the Tree Preservation Order. The inclusion of the trees in an Order means that formal consent is required from the Local Planning Authority (LPA) to undertake works to any tree included in a Tree Preservation Order – but, as it is reasonable to believe that works in accordance with good arboricultural practice would be approved, and certain works (including the removal of deadwood, dead trees, treeworks to the extent that such works are urgently necessary to remove an immediate risk of serious harm) could be undertaken in any event pursuant to exemption provisions. Hence any shortcomings in the tree management regime would be attributable to factors outside the presence of the Tree Preservation Order.

- (xi) The Local Planning Authority (LPA) was completely unaware of the correspondence and meeting with the Golf Club General Manager to which some residents refer – and with which it appears that the making and service of the above Tree Preservation Order has coincidentally overlapped.
- (xii) It is regrettable that such a lengthy period of time elapsed between the drafting of the delegated report and the administrative procedures necessary to complete the making of the Order. However, the timing of the making of the Order reflects departmental prioritisation and was in no way linked to any contact with the Golf Club or any other party.
- (xiii) On being made aware of the treeworks discussions referred to by residents, the relevant form and associated guidance notes were delivered to the Golf Club General Manager (at the beginning of November) so that either he, or his arborists, could submit an application. At the time of drafting this report, submission of an application from him / his tree surgeon is still awaited.
- (xiv) However, although the Golf Club General Manager was sent an application form, it would be for him “to take immediate action to safeguard the lives and homes” and there is no foundation for the suggestion that Barnet Council’s “Failure to do so would be an admission of negligence” – any such consequences would result from a failure to submit an application or otherwise accord with the legislation, rather than the Order itself.
- (xv) It should further be noted that that there are no restrictions on who can submit a treeworks application – and we often receive applications from neighbours or their agents. Hence, if a neighbour had concerns about e.g. overhanging branches for which the Golf Club declined to take any action, the resident or a tree surgeon on his / her behalf could submit an application which, as with all applications, would be considered on its own merits taking account of the reason(s) put forward for the proposed treatment and any supporting documentary evidence.
- (xvi) Similarly, if a resident had concerns that tree(s) were implicated in alleged subsidence damage to property, an application accompanied by the relevant mandatory supporting information (as set out on the application form and associated guidance notes) could be submitted by either the resident or the Golf Club or an instructed agent. The application would be determined on its merits (possibly by the Area Planning Committee) and, should the applicant be aggrieved by the LPA’s decision, there would be a right of appeal to the Secretary of State via The Planning Inspectorate; in addition, the legislation sets out potential compensation provisions for loss of damage in which, having regard to the application and the documents and particulars accompanying it, was reasonably foreseeable.

As set out above, the Order is considered to be ‘expedient in the interests of amenity to make provision for the preservation of trees or woodlands in their area’. There is support for the Order and the grounds of objection seem based mainly on some misunderstanding about the legislative provisions in respect of the Tree Preservation Order; perhaps compounded by confusion about the rights and responsibilities imposed by the lease; exacerbated by the unbeknownst coincidental timing of the making of the Order.



## 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.

