

# **BARNET**

## **LONDON BOROUGH**

### **COMMITTEE REPORT**

- LOCATION:** NEW SOUTHGATE CEMETERY AND CREMATORIUM,  
BRUNSWICK PARK ROAD, LONDON N11 1JJ
- REFERENCE:** 17/TPO/038
- WARD:** Brunswick Park
- 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 New Southgate Cemetery (Brunswick Park Road frontage) Brunswick Park Road, London N11 1JJ Tree Preservation Order 2018 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 27<sup>th</sup> November 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 10<sup>th</sup> January 2018 in the interest of public amenity following requests from local residents, supported by a Ward Member. Following a lengthy period of consideration, the making of the Order was considered justifiable both on grounds of amenity and expediency. The Order relates to 17 trees designated as group G1 (9 Oaks, 2 multi-stemmed Hornbeam, 2 Field Maple, 1 twin-stemmed Field Maple, 1 Pine and 2 Ash), standing on the Brunswick Park Road frontage of the Cemetery, between the boundary with Darwin Close to opposite 115 Brunswick Park Road.

There is a separate Tree Preservation Order (TRE/BA/45) that was made in December 1980 on part of the [variously named] Great Northern London Cemetery / New Southgate Cemetery / New Southgate Cemetery and Crematorium - in connection with the residential development of part of the cemetery to what is now Marshalls Close and Darwin Close. Almost all of the designated trees in this Order (with the exception of group G2, G3, T6, T7 and the edge of area A3) stand outside the current boundary of the Cemetery.

In November 2008, a local resident requested that trees at New Southgate Cemetery be considered for inclusion in a Tree Preservation Order as *“Many trees in the cemetery are coming under threat from the management’s new method of re-using old parts of the cemetery for new burials. The new method consists of wholesale felling to completely clear sections of the cemetery. This development of the modern way of managing the cemetery – for the maximum use of machinery and lower running costs – poses a very significant threat to the trees and the local landscape.”* The resident highlighted some sections believed to be particularly at risk.

The inclusion of Cemetery trees in an Order has been subject of protracted consideration, not least because of potential ramifications of day-to-day cemetery management and the resource implications for the Local Planning Authority. Rather than making an Order in the first instance, various alternative approaches were pursued. There were also changes to the structure and heading up of the Development Management team. The following correspondence extracts provide some details:

A reply was initially sent to the resident advising that the relevant history files had been investigated and the matter discussed with the Head of Planning and Development Management – but noting that the Council would need to consider carefully the appropriateness of making a Tree Preservation Order given the established use of the land. There was also some correspondence about Forestry Commission felling licencing.

The Tree Officer also wrote separately to the MD of Westerleigh Group (Cemetery Management Company) in 2009:

“I have been contacted by several local residents concerned about tree removals at New Southgate Cemetery, in particular along the Brunswick Park Road frontage.

My attention has recently been drawn to the New Southgate Cemetery notice dated April 2008 on display that refers to Improvement Works in Sections O, P, Q, and R “.....We will shortly be commencing the renovation project that has already started on the area adjacent to the entrance. It is our intention to continue the works along the whole of the boundary with Brunswick Park Road.....”

As you may be aware, in accordance with the provisions of the Forestry Act 1967 (as amended), a Felling Licence issued by the Forestry Commission would normally be required for felling growing trees. If there is no licence or other valid permission, or if the wrong trees are felled, anyone involved can be prosecuted. Any felling carried out without either a licence or other permission is an offence, unless it is covered by an exemption.

It seems likely that, if the improvement works are undertaken in a similar manner to those in the summer of 2008, none of the specified exemptions from the requirement to obtain a Felling Licence would apply. Colleagues at the Forestry Commission have confirmed that cemeteries and crematoria are not exempt from needing a Felling Licence.

I note that the ‘Community’ section of the New Southgate Cemetery and Crematorium website states ‘In recognition of our importance within the community, we aim to soon establish a forum of local ministers, funeral directors and families who can be consulted on future developments.’ Whilst I am obviously aware of the

need for ongoing routine maintenance treeworks for health and safety purposes, given the concern raised by local residents about trees at the site, I would appreciate being consulted on any extensive treework proposals at the New Southgate Cemetery site.”

To which a reply was received from the Westerleigh MD stating that the trees removed had been identified as unhealthy and posing a risk to the public but that “We have not felled growing trees to date and do not intend to do so in the future. We will though continue to carry out work within a responsible tree management programme and will fell trees if identified as unhealthy and of substantial risk to the public. However, we would be pleased to outline our plans to you first as you suggest in your letter.”

The Tree Officer responded:

“Whilst I was aware of my colleague's previous advice in respect of roadside trees, concern was raised as the works undertaken were in excess of those discussed.

However, on a more positive note, I welcome the opportunity to be informed of your future plans and I look forward to hearing from you in due course.”

The Tree Officer was also in contact with Westerleigh’s Arboricultural Consultant:

“I refer to your letter dated 26<sup>th</sup> August 2010 and our subsequent discussions, I apologise for the delay in writing to you. I have now had the opportunity to discuss the matter with various colleagues, and offer the following observations on the proposed works outlined in your letter:

Whilst appreciating your client’s wish to undertake works to 'improve the grounds, restore where practical historic features and also to ensure that visited graves remain safely accessible' and to 'rationalise existing grave space and to facilitate the reuse of plots where applicable', I have significant concerns about various aspects of the proposal.

As you acknowledge, the mature trees along Brunswick Park Road are important to the streetscene, have public amenity value, provide screening, and are part of a historical landscape. However, especially given the context of the site, I do not believe that it is appropriate to consider the site piecemeal – a Conservation Management Plan for the whole site would be very useful, and you may wish to look at English Heritage’s publication *Paradise Preserved: An introduction to the assessment, evaluation, conservation and management of historic cemeteries* for guidance.

Whilst I am aware that there are a lot of self-sets and scrub, many of the trees at the site are integral to the historic landscape - I do not consider that simply identifying key trees within 10m of the Brunswick Park Road boundary fence is appropriate. A tree survey (in accordance with BS5837:2005) should be prepared for the entire Cemetery site which would allow identification of key trees within the historic designed landscape – particularly given your client’s wish to ‘restore historic features’, this context could then form the basis for management, highlighting areas for removal of poor quality trees and retention of more important trees, it would also guide potential replacement planting. It appears from your attached plan that there is some tree survey data already available?

Whilst I note the references to root protection areas and method statement, I have concerns that the proposed level changes would have significant implications for localised drainage patterns and be likely to result in ponding around retained trees. However, the extensive vegetation removal and level changes currently envisaged are also considered to have implications beyond trees.

The proposed surcharging with approximately 1.2m over the existing areas as indicated would be considered as 'engineering works' and thus require planning permission. Application forms can be downloaded from the Council's website....., if you wish further advice please contact .....

The Cemetery site is designated as a Grade II Site of Borough Importance for Nature Conservation (Ba.BII 21) – any proposed clearance works would need to minimise any potential impact on protected species and appropriate ecological surveys should be undertaken.

The site is also included in the London Parks and Gardens Trust's List of Parks and Gardens of Special and Local Historic Interest.

In the absence of planning permission, the Forestry Commission have confirmed that cemeteries and crematoria are not exempt from needing a felling licence.

As you may be aware, there was considerable local concern at previous management works at the Cemetery site, I think it likely that extensive tree removals, especially close to the Brunswick Park Road frontage as proposed, would exacerbate the situation. Whilst I appreciate the need to undertake some works, it does not seem reasonable to undertake wholesale clearance to create an open area for potential re-use in advance of requisite legislation, especially in the absence of demonstration of appropriate justification.

As far as trees are concerned, I would suggest that an initial step would be to undertake a tree survey of the whole Cemetery site to allow identification of key trees for retention and areas where removal would be justifiable on arboricultural grounds, it would also inform replacement planting - such a survey would be required in any event as part of a planning application and may avoid the need to make an 'area' Tree Preservation Order. Once the location of key trees and their root protection areas has been identified, potential level changes could be assessed. Ecological surveys would also be required. If you, or your client, would like a meeting to discuss this matter further, please contact me at the address overleaf."

After some initial exchanges of information about treework, after about 2013 Westerleigh / their arboriculturist(s) stopped advising the Local Planning Authority of their proposals and carried on regardless with works at the Cemetery.

On 28<sup>th</sup> November 2011 English Heritage formally determined not to add New Southgate Cemetery to the Register of Parks and Gardens of Special Historic Interest in England.

There continued ongoing correspondence between the resident(s), local Councillors and the Tree Officer about the appropriateness of making an Order. In 2014, the then Head of Development Management advised Theresa Villiers MP and Members that the Council

would consider protecting individual, rather than large areas of, trees of special amenity value at the site if residents identify individual trees which they believe are worthy of protection because of their special contribution to the character and appearance of the area. It was also suggested that it may be appropriate to consider the making of an Order when more detailed information was available following the New Southgate Cemetery Bill Promoter's Undertakings to the Parliamentary Committee to carry out a nature conservation assessment of the cemetery grounds (likely to include a tree survey) and a Conservation Management Plan which "will take into account and assess, among other things, the ecological, arboricultural and landscape values of the Cemetery".

In the light of this, the resident refined the TPO request:

"Thank you for your e-mail of 4 August 2017 to the Councillors about my request for TPOs on some of the trees in the cemetery. I understand the issues from the Council's point of view and that protecting trees on private commercial land is not easy and involves cost. My request for some TPOs is limited ..... in recognition of the needs of the cemetery to operate as a burial ground and commercial venture, and because I would not want to over-burden the Council...."

The New Southgate Cemetery Act 2017, authorising the burial authorities responsible for the cemetery to extinguish rights of burial in grave spaces and to disturb and re-inter remains in order to increase the space for further interments, was granted Royal Assent on 16<sup>th</sup> November 2017.

The TPO request was again discussed with the Head of Development Management and the trees identified on the resident's map were inspected by the Tree Officer. However, as the section boundaries are not clearly demarcated when viewed from outside the boundaries of the Cemetery, the inspection was slightly extended to include trees on the Brunswick Park Road frontage of the Cemetery approximately opposite the north-western section of New Southgate Recreation Ground (i.e. between the Cemetery site boundary with Darwin Close up to opposite 115 Brunswick Park Road – just past Brunswick Park Road Car Park).

It was considered that of the trees inspected, 17 (9 Oaks, 2 multi-stemmed Hornbeam, 2 Field Maple, 1 twin-stemmed Field Maple, 1 Pine and 2 Ash) were appropriate for inclusion in an Order. Self-evidently these trees are very clearly visible, both as individuals and as part of the wider woodland, from Brunswick Park Road and New Southgate Recreation Ground as well as from the Cemetery itself. The public amenity value of these trees is enhanced by their age, size, and position - trees close to the Cemetery boundary and Park entrances uniting visually to form a verdant streetscape. The public amenity value of the collective group is greater than some of the individual trees. Whilst the trees in the Recreation Ground (a Public Open Space) are already under the direct control of the Council, it is becoming increasingly obvious that despite assurances to the contrary, Cemetery management is being undertaken without due regard for trees (for example, as evidenced by the dumping of spoil and debris in such proximity during wall reconstruction works).

It would obviously be preferable to have site-wide identification of key trees within the historic designed landscape (which could then form the basis for management, highlighting areas for removal of poor quality trees and retention of more important trees, and act as a guide potential replacement planting) – and on this basis the Westerleigh arboricultural consultant's suggestion (in 2010) of identifying key trees within 10m of the Brunswick Park

Road boundary fence had previously been dismissed as inappropriate. However, given the recent apparent disregard for tree protection demonstrated by Cemetery management; the discontinuance of informal advising of plans; the failure of agreed tree-planting with absence of replacements; together with the ongoing discussions with residents / Members, it is considered justifiable to make an Order on a small group of trees on the roadside frontage at this time – rather than await a more detailed assessment.

In particular, the group of 17 trees (9 Oaks, 2 multi-stemmed Hornbeam, 2 Field Maple, 1 twin-stemmed Field Maple, 1 Pine and 2 Ash), standing on the Brunswick Park Road frontage of the Cemetery between the boundary with Darwin Close to opposite 115 Brunswick Park Road, contribute significantly to public amenity and, with normal cultural attention, are capable of so doing for a number of decades – in the circumstances, it was considered that it was expedient and appropriate in the interests of public amenity to include the trees in a Tree Preservation Order.

It has previously been acknowledged that the mature trees along Brunswick Park Road are important to the streetscene; have public amenity value; provide screening; and are part of a historical landscape. Although there has been previous reluctance to adopt a piecemeal approach to Tree Preservation at the Cemetery, it is considered that there is public amenity justification in designating a discrete group of trees along the Brunswick Park Road frontage of the Cemetery in an Order to give the Local Planning Authority some measure of control over the specified trees - particularly in the light of the apparent lack of regard for these trees recently shown by the site management. The inclusion of these trees in an Order should not pose significant operational challenges for the Cemetery because the location of the group of trees, along the site boundary, means that burial works in their vicinity is likely to be markedly less than in more central positions.

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 a local resident in support of the Tree Preservation Order:

- “I would like to thank you very much for having placed a TPO on the group of trees standing close to Brunswick Park Road frontage of New Southgate Cemetery. I am so pleased that Barnet Council has been proactive in this matter and I appreciate that you have given a lot of consideration to my detailed reasons for fearing the loss of too many trees in this cemetery and the effect on nature and the surrounding neighbourhood.”

A letter of representation objecting to the Tree Preservation Order was received from an arboricultural consultant instructed by New Southgate Cemetery & Crematorium Ltd, which is part of the Westerleigh Group Holdings Ltd (who own and manage the relevant land). The letter stated that ‘the objections were made without prejudice and were lodged formally by Westerleigh Group Holdings Ltd with the request that the TPO not be confirmed, and that further dialogue between the Council’s tree officers be encouraged to

assuage any further concerns regarding the management of the trees onsite.' The grounds of objection raised in the representations are as follows:

- “The trees in question are under good and effective management which ensures their preservation.
  - The trees in question are currently under good arboricultural management which meets the highest standards to ensure that the trees are retained in a healthy and safe condition. Westerleigh Group expend considerable effort to maintain the trees, in particular those with significant amenity such as these. There is no dispute over their amenity supported by the fact that Westerleigh Group are actively managing these trees. Works have been carried out to achieve good management in the recent past. It is therefore argued that the imposition of a TPO is not expedient as defined by the government guidance on the matter.”
- “The TPO will hinder the timely management of the trees.
  - Westerleigh Group expend a considerable amount of time and money to actively manage the trees on their sites. In the case of New Southgate this has taken the form of putting in place an active plan to bring back into good management areas that have been completely neglected in the past. The clearance of overgrown areas to provide improved access, to reduce incidents of anti-social behaviour and enhance the amenity of the site are self-evident. As part of this programme the principal trees dating from the original Victorian planting, including those that predate the cemetery such as along Brunswick Park Road have been retained, with other self-set trees being removed to achieve the aforementioned improvements. There is an active tree planting plan in place where larger trees with significant amenity are removed. This demonstrates a commitment not only to maintaining the existing tree stock but also to ensuring a future treed landscape in keeping with the local character and use of the site. The TPO will impose a significant additional administrative cost on Westerleigh Group which might be reasonably directed at the ongoing improvements to the tree stock onsite.”
- “The imposition of a TPO without reasonable consultation sets a poor precedent for achieving the harmonious reconciliation of tree management on this site.
  - The approach of the Council in making this TPO without first approaching the site manager or the company does not encourage or support the positive relationship enjoyed up until now. Westerleigh Group have been at pains to establish good working relations with the Council based on an openness and wish to achieve common goals. The confirmation of this TPO will inevitably diminish the sense of trust between Westerleigh Group and the Council, thereby the current working relationship will be damaged.”

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

- (i) The representation in support suggests that resident(s), too, consider that the trees have high public amenity value. Westerleigh's arboricultural consultant confirms “There is no dispute over their amenity value”.



- (ii) Although the arboricultural consultant contends that the trees are currently under good arboricultural management, this is not borne out on inspection. It is becoming increasingly obvious that, despite previous assurances to the contrary, Cemetery management is being undertaken without due regard for trees - for example, during the recent rebuilding of the boundary wall there were no observable tree protection measures in place and some consequent root damage was evident.
- (iii) The arboricultural consultant's suggestion that 'the imposition of a TPO is not expedient as defined by the government guidance on the matter' appears to disregard the government guidance (at paragraph 010 in the 'Tree Preservation Orders and trees in conservation areas' section of National Planning Practice Guidance) cited towards the beginning of this report, which refers to expediency in the context of the authority's belief that 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 (in this case in the light of the recent New Southgate Cemetery Act 2017 and recently observed site operations).
- (iv) The contention that 'the TPO will hinder the timely management of trees' and 'will impose a significant additional administrative cost on Westerleigh Group which might be reasonably directed at the ongoing improvements to the tree stock onsite' disregards the very selective inclusion of a relatively small number of boundary trees in the Order. The substantial majority of trees across the Cemetery site are not included in this Order and their management should be completely unaffected.
- (v) The suggestion that there is 'an active tree planting plan in place' and 'a commitment not only to maintaining the existing tree stock but also to ensuring a future treed landscape' is not evidenced in the previously implemented surcharged areas further north along the Brunswick Park Road frontage - which resulted in considerable loss / damage of mature trees – and where much of the agreed mitigation planting has failed but not been replaced.
- (vi) Despite the arboricultural consultant seeking to suggest that there has been a 'positive relationship enjoyed up until now' and that 'Westerleigh Group have been at pains to establish good working relations with the Council based on an openness and wish to achieve common goals', as set out above, there has been no communication with officers in the Planning Trees team from the site manager; any representative from Westerleigh Group; or their arboricultural consultant about trees and treeworks at New Southgate Cemetery, or the New Southgate Cemetery Bill / Act for several years.
- (vii) It is not usual to undertake consultation prior to making a Tree Preservation Order (trees being significantly more vulnerable between the time of any discussion and the making of an Order, because the legal protection to the trees only comes into force at the date the Order is made). However, in both correspondence and informal discussions, Westerleigh's arboricultural consultant has been aware of the potential making of a Tree Preservation Order. In this case, it should also be noted that various alternative

approaches were pursued prior to making this Order - but after some initial exchanges of information about treework, Westerleigh / their arboriculturist(s) stopped advising the Local Planning Authority of their proposals and carried on regardless with works at the Cemetery.

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 local support for the Order and the grounds of objection do not seem to accurately reflect the Local Planning Authority's or residents' experience of current site management practice.

## **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.

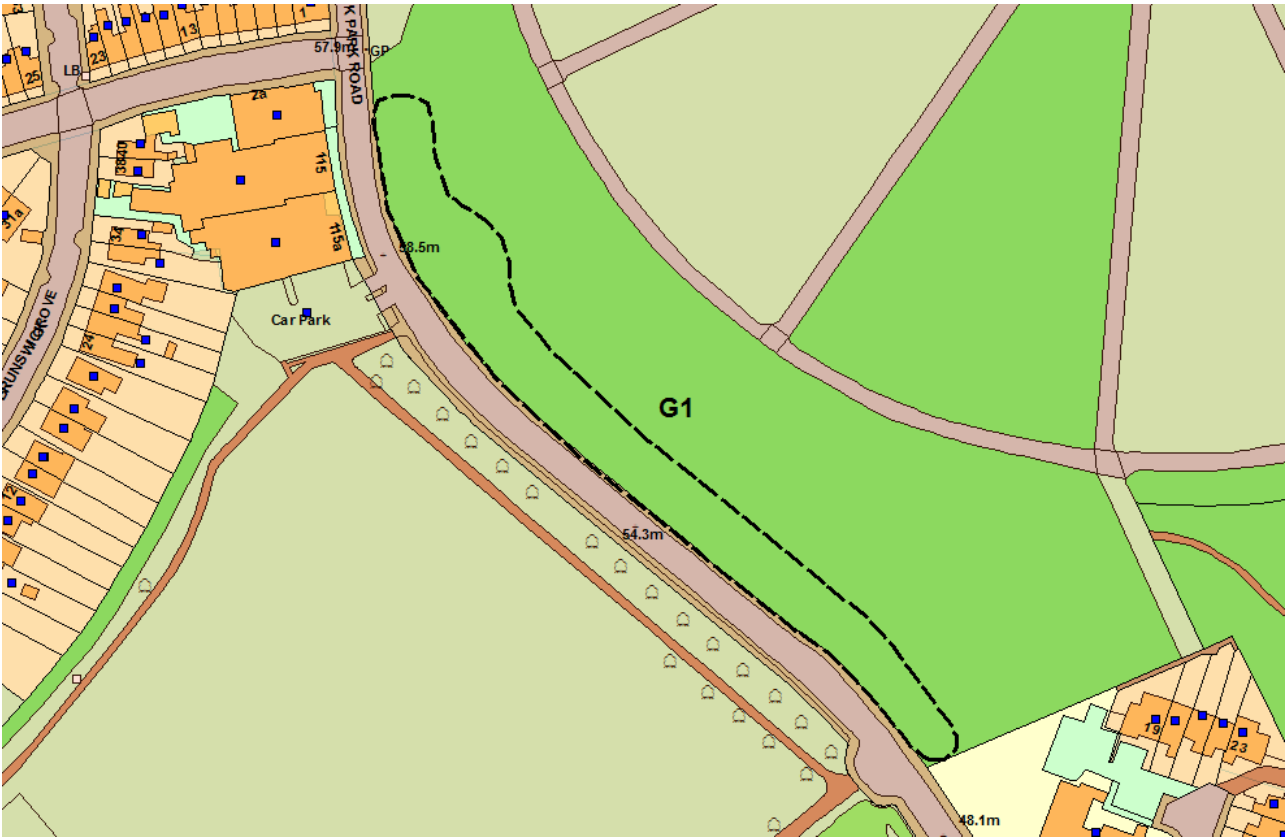
The Council have considered the Act but do not believe that the confirmation of the Order would have a significant impact on any of the groups as noted in the Act.

## **3. CONCLUSION**

The inclusion of Cemetery trees in an Order has been subject of protracted consideration, not least because of potential ramifications of day-to-day cemetery management and the resource implications for the Local Planning Authority. Rather than making an Order in the first instance, various alternative approaches were pursued.

In the light of previous unfulfilled assurances about responsible tree management practices and prior outlining of plans, the request on behalf of Westerleigh Group Holdings Ltd 'that the TPO not be confirmed, and that further dialogue between the Council's tree officers be encouraged to assuage any further concerns regarding the management of the trees onsite' is considered inappropriate.

The confirmation of the Tree Preservation Order is considered reasonable 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 in group G1 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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