

BARNET

LONDON BOROUGH

COMMITTEE REPORT

- LOCATION:** SHELL STIRLING CORNER PETROL FILLING STATION
STIRLING CORNER, BARNET EN5 3JG
- REFERENCE:** 19/TPO/030
- WARD:** High Barnet
- 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 Shell Stirling Corner Petrol Filling Station Stirling Corner Barnet EN5 3JG Tree Preservation Order 2019 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 Service Director – Planning and Building Control dated 17th September 2019
- 19/3978/FUL - Demolition of existing service area and construction of Shell Flagship site comprising fuel and EV charge points, hub building, drive-thru coffee facility, parking and associated works and services. (AMENDED DRAWINGS AND DOCUMENTS)
 - Shell Stirling Corner Petrol Filling Station, Stirling Corner, Barnet EN5 3JG
 - Validated 25th July 2019
 - Still under consideration
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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 23rd September 2019 in the interest of public amenity in the light of a planning application for redevelopment at the site (19/3978/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.

At the time the Order was made, a planning application had been received for “Demolition of existing service area and construction of Shell Flagship site comprising fuel and EV charge points, hub building, drive-thru coffee facility, parking and associated works and services” at Shell Stirling Corner Petrol Filling Station, Stirling Corner, Barnet EN5 3JG (19/3978/FUL). The Re Arboricultural Consultant giving arboricultural advice to the Case Officer observed “I am concerned about the loss of number of oak trees to facilitate this application 25 category B and 1 cat A and other important trees. There is considerable scope to reduce the scheme to ensure more of these trees are retained. The extent of the landscape scheme fails to provide enough mitigation to even begin to offset the loss of these trees. They have sufficient public amenity to merit special protection by TPO in accordance with policy.” and accordingly requested consideration of the merits of making an Order.

An Arboricultural Report dated 12th July 2019 prepared by Curtis Barkel of Sylvanarb Arboricultural Consultants was submitted as part of the planning application documents. The BS5837 tree survey provides details of 16 individual trees and 11 groups (of varying sizes) of trees - by reference to BS5837: 2012 categorisation these have been assessed as being:

Category A – 2 x trees

Category B – 8 x individual and 3 x groups

Category C – 5 x individual and 8 x groups

Category U – 1 x individual

The submitted Tree Removal Plan appeared to show direct loss of 1 Category A; 29 Category B; 12 Category C; and 1 Category U trees – given their proximity, it seems reasonable to believe that additional trees may well also be damaged as part of the proposed redevelopment.

The trees are of varying ages – ranging from a late mature Oak 16m in height with a trunk diameter of 1230mm (T1, category A3) located adjacent to the Barnet Road site entrance “forming a notable feature within the streetscene” to a number of young / semi-mature trees (including a group of approx. 50 Oak 10 – 13m in height, G5, category B2) in good condition.

The site is located at the eastern quadrant of Stirling Corner roundabout (the junction of A1 Barnet Bypass and A411 Barnet Road), within designated Green Belt land, on the borough boundary with Hertsmere. The trees are very clearly visible from all directions from the Barnet Bypass and Barnet Road, forming a backdrop to the filling station forecourt and forming a buffer to the surrounding undeveloped land. Especially given the traffic lights at the busy roundabout, not only is public visibility particularly high; but the trees’ environmental contribution, for example in terms of adsorbing airborne particulate pollution, filtering traffic noise, and providing wildlife habitat are very important. The range of species and sizes of trees at the site contribute significantly to aesthetic, environmental and ecological interest – both as individual specimens now and as maturing tree stock of diverse age range with the potential to maintain the interest for decades to come into the future.

The north-eastern and south-eastern boundaries of the site adjoin the “Former Stirling Corner Sports Ground, Barnet Road” land. The sportsground land is subject of an area Tree Preservation Order (internal reference TRE/BA/80) made in 1995, seemingly in connection with a planning proposal for re-grading the land which was refused. It appears that the area boundary was directly linked with the planning application submissions and trees on adjoining land were not assessed at that time.

It is believed that the collective public amenity value of the diverse range of trees at the site is considerable – as outlined above – and removal would have a significant negative impact on the local environment and its enjoyment by the public. The trees have been assessed as being clearly visible from a public place; contributing to buffering between filling station forecourt and undeveloped land; and additionally, have particular environmental value for mitigating pollutants and noise from the busy highway, and ecological value for nature conservation. Inclusion of the trees in an Order gives the Council as Local Planning Authority some measure of control over treatment considered excessive; as well as allowing imposition of planning condition(s) if deemed appropriate when determining the redevelopment application.

The submitted tree survey plan includes perhaps 100 trees, some of which are in groups that appear to have been plotted indicatively and assessed collectively. It was therefore considered reasonable to designate the trees as an 'area' – not least as their public amenity value arises from their collective importance – however, the Weeping Willow, T16 (the only Category U tree), was excluded given its poor condition and its relatively isolated position. To avoid uncertainty, the 'area' boundary was depicted to directly adjoin area A1 of the existing Order on the adjacent land – thus ensuring that all the trees are protected.

With appropriate cultural attention, the trees are capable of contributing to public amenity for a considerable period of time. For the above reasons it was considered appropriate to include the trees in a Tree Preservation Order.

Since the Order was made, there have been ongoing discussions between the Case Officer and the applicant's representatives – which have resulted in revisions being made to the redevelopment scheme (hence its currently registered description). At the time of drafting this report, application 19/3978/FUL - Demolition of existing service area and construction of Shell Flagship site comprising fuel and EV charge points, hub building, drive-thru coffee facility, parking and associated works and services. (AMENDED DRAWINGS AND DOCUMENTS) is still under consideration.

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 trees 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.

A letter of representation objecting to the Tree Preservation Order has been received from the Planning Consultant acting on behalf of Shell UK, who is the named agent for the planning application. The representations conflate matters relating to the Tree Preservation Order and to the planning application but, in terms of the Order, are as follows:

- *It is relevant to this objection that the land identified in the Order forms part of a current planning application and therefore it is considered that the Order is premature and fails to take into account the matters being considered as part of the determination of the planning application.*
- *It is considered that the Council's arboriculture consultant's report has unfairly considered the scheme will have 'a catastrophic impact on visual amenity and ecology'. In our view, while there would be a fairly high number of trees to be removed, many of these, as shown in the application details, are low or*

moderate value only, with many others being retained and/or replaced. It is considered the impact is not 'catastrophic'. Indeed, the consultant has suggested conditions which can be imposed on the permission. As part of the proposals, additional planting potentially using a specimen oak theme can be proposed to mitigate the losses. It is considered that in these circumstances and taking into account the discussions currently on the planning proposals, the blanket Tree Preservation Order, which covers all of the site outside the current service station, is inappropriate and fails to consider the merits of the development and opportunity to replace lost trees. It also fails to take account of the impact of trees outside of the application site area.

- It is also important that sufficient time is given to reflect on the Council's consultant's report, which was only forwarded to us following the meeting on 18 October. The information requested is being prepared by Shell's arboricultural consultants. The TPO does not take this matter into account. In light of this, it is considered that the Tree Preservation Order is inappropriate and unnecessary.*
- In its current form, the Order fails to reflect the proposals being considered for development or the details provided for mitigation and landscaping. Therefore, it is inappropriate at this time and should await the outcome of the current discussions.*
- In any event, if an Order is considered necessary in support of the protection of retained trees and future planting, it would be more acceptable to revise the Tree Preservation Order on the basis of an approved development and landscape scheme. The Order could therefore ensure the protection of retained trees and any replacement trees which will improve the appearance of this area and its contribution to Stirling Corner. This contribution is important as it frames the proposed development and is still set against the backdrop of trees beyond the application site.*
- The blanket scope of the Order fails to take account of the merits of the development scheme or the proposals included as part of the scheme for the retention and protection of trees, their replacement and the additional planting which forms part of these proposals.*
- It is also considered that the advice contained in Planning Practice Guidance is relevant in assessing the amenity value of the trees. While trees on the edge of the area can be seen, these are on private land and the development of the site will enhance their value, manage the trees better and provide an improvement for the public and visitors to the site in terms of their visibility and amenity value. This is a positive contribution to the area rather than a blanket TPO.*

- *It is considered that the Council's reasons for the Order are considered to be very broad in respect of amenity and fail to recognise that the land is subject to detailed proposals and, as private land, has limited value in terms of amenity.*

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

- (i) The confirmation of the Tree Preservation Order and assessment of planning application for redevelopment are separate procedures. A Tree Preservation Order is made / confirmed in accordance with s198 of Act and the Town & Country Planning (Tree Preservation) (England) Regulations 2012); whereas the determination of the redevelopment application would be subject to section 70(2) of the Town and Country Planning Act 1990 and section 38(6) of the Planning and Compulsory Purchase Act 2004.
- (ii) The objection conflates the separate procedures of confirmation of the Tree Preservation Order and assessment of planning application for redevelopment. If it is considered that, because of implications for trees, a planning permission should be refused or granted subject to conditions to protect the trees, a Tree Preservation Order should be in place in accordance with the planning legislation. Confirmation of the Order would render the trees a material consideration in any planning application - the merit of trees and appropriateness of retention would be taken into account when assessing the planning application.
- (iii) The contention that the Tree Preservation Order should not be confirmed because it *"is premature and fails to take into account the proposed development"* misunderstands legislative procedures and that the making / confirmation of an Order is a separate step to the determination of a planning application for development.
- (iv) Confirmation of the Tree Preservation Order would allow the imposition of conditions for the preservation and planting of trees ('additional planting', 'mitigation and landscaping', 'temporary tree protection', 'tree felling and pruning specification') should development occur.
- (v) As noted above, the submitted Sylvanarb Arboricultural Consultants arboricultural assessment itself indicates that there are a number of good quality individual and groups of trees at the site (classified as BS5837 category A or B), and also that a large number of trees would need to be removed to accommodate the redevelopment. The Re Arboricultural Consultant giving arboricultural advice to the Case Officer raised concern about the extent of proposed tree loss and the inadequacy of mitigation - and requested the consideration of the Tree

Preservation Order, believing trees to “have sufficient public amenity to merit special protection by TPO in accordance with policy.”

- (vi) Officers do not consider that the amenity of the area will be preserved by the proposed development:
- The Re Arboricultural Consultant giving arboricultural advice to the Case Officer observed “I am concerned about the loss of number of oak trees to facilitate this application 25 category B and 1 cat A and other important trees. There is considerable scope to reduce the scheme to ensure more of these trees are retained. The extent of the landscape scheme fails to provide enough mitigation to even begin to offset the loss of these trees.”
 - The Tree Officer assessing the trees in connection with the Order at the site within designated Green Belt land noted that the trees are very clearly visible from all directions from the Barnet Bypass and Barnet Road, forming a backdrop to the filling station forecourt and a buffer to the surrounding undeveloped land; that especially given the traffic lights at the busy roundabout, not only is public visibility particularly high, but the trees’ environmental contribution, for example in terms of adsorbing airborne particulate pollution, filtering traffic noise, and providing wildlife habitat are very important; also that the collective public amenity value of the diverse range of trees at the site is considerable and removal would have a significant negative impact on the local environment and its enjoyment by the public.
- (vii) Although the objection suggests that “*the blanket Tree Preservation Order, which covers all of the site outside the current service station, is inappropriate*”, it should be noted that the ‘area’ designation was selected particularly because the submitted tree survey plan includes perhaps 100 trees, some of which are in groups that appear to have been plotted indicatively and assessed collectively as well as to reflect that the trees’ public amenity value arises from their collective importance. The Order also specifically excluded the Category U Weeping Willow given its poor condition and its relatively isolated position.
- (viii) It is unclear what is meant by the objection comment that the Order “*also fails to take account of the impact of trees outside of the application site area.*” – the ‘area’ boundary is depicted to directly adjoin area A1 of the existing Order on the adjacent land – thus ensuring that all the trees (apart from the above Willow) on and outside the application site area have the same type of statutory protection.

- (ix) The letter of representation contends that “*as private land, has limited value in terms of amenity*” and “*While trees on the edge of the area can be seen, these are on private land and the development of the site will enhance their value, manage the trees better and provide an improvement for the public and visitors to the site in terms of their visibility and amenity value*” seem unfounded. Trees at the site on the Stirling Corner roundabout (the junction of A1 Barnet Bypass and A411 Barnet Road) are very clearly visible from all directions from the Barnet Bypass and Barnet Road, forming a backdrop to the filling station forecourt; a buffer to the surrounding undeveloped land; and making an important environmental contribution in terms of adsorbing pollutants and as wildlife habitat – the fact that these trees stand on private land does not affect such attributes and it should be noted that in 2017 about 81% of trees in outer London were in private ownership.
- (x) It also appears that the objection makes contradictory assertions that (a) the existing trees of diverse age range have limited amenity value, whereas (b) following the proposed removal of “a fairly high number of trees” (including a considerable number of category A and B trees), “*the protection of retained trees and any replacement trees which will improve the appearance of this area and its contribution to Stirling Corner.*” and “*This contribution is important as it frames the proposed development and is still set against the backdrop of trees beyond the application site.*”
- (xi) In accordance with TPO legislation, a provisional Order lapses if it is not confirmed within six months of being made. As there are ongoing discussions about the redevelopment proposals, with no certainty as to duration or outcome, the decision whether or not to confirm the Order needs to be made independently of the timing of the planning application.
- (xii) If trees are unprotected, there would be no control over treatment – however, if the Tree Preservation Order is confirmed:
- The Local Planning Authority’s consent is not required for carrying out work on trees subject to an Order so far as such work is necessary to implement a full planning permission. So, if planning permission is granted, the Order is overridden in relation to the tree(s) specified to be removed to make way for the new building for which full planning permission has been granted and to implement approved conditions.
 - there is no reason to believe that consent would be refused for any future 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).

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'. In accordance with TPO legislation, a provisional Order lapses if it is not confirmed within six months of being made. There is no certainty as to the duration or outcome of the ongoing discussions about the redevelopment proposals, 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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