

BARNET

LONDON BOROUGH

COMMITTEE REPORT

- LOCATION:** FRITH GRANGE CAMP SITE AND ADJACENT, FRITH LANE, MILL HILL, LONDON NW7 1PT
- REFERENCE:** 20/TPO/002
- 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 Frith Grange Camp Site And Adjacent, Frith Lane, Mill Hill, London NW7 1PT Tree Preservation Order 2020 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 9th January 2020
- 19/5827/FUL - Full Planning Permission for Phase 6B, associated with the Millbrook Park development, for the erection of 2 linked buildings 6 storeys in height comprising 82 residential units (Use Class C3), 615sqm (GIA) of employment space (Use Class B1), together with associated plant, car parking, cycle parking, refuse stores, servicing areas and associated hard and soft landscaping
 - Millbrook Park (Former Inglis Barracks), Mill Hill East, London NW7
 - Validated 30th October 2019
 - Recommended for conditional approval by this Committee on 2nd March 2020 but awaiting completion of s106 agreement.
- 18/6640/FUL - Full Planning Permission for the erection of 2 linked buildings ranging from 5-6 storeys in height comprising 87 residential units (Use Class

C3), 700 sqm (GIA) of employment space (Use Class B1), together with associated plant, car parking, cycle parking, refuse stores, servicing areas and associated hard and soft landscaping

- Millbrook Park (Former Inglis Barracks), Mill Hill East, London NW7
- Validated 7th November 2018
- Refused by this Committee on 23rd July 2019
- Allowed on appeal on 20th May 2020

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 9th January 2020 in the interest of public amenity in the light of a planning application for redevelopment at the site (19/5827/FUL) and an e-mail received from the Barnet Borough Scout District Deputy Commissioner expressing significant concern about implications of the planning proposal for trees on the adjacent Scout land and asking about them being considered for inclusion in an urgent Tree Preservation Order. 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 was under consideration for “Full Planning Permission for Phase 6B, associated with the Millbrook Park development, for the erection of 2 linked buildings 6 storeys in height comprising 82 residential units (Use Class C3), 615sqm (GIA) of employment space (Use Class B1), together with associated plant, car parking, cycle parking, refuse stores, servicing areas and associated hard and soft landscaping” at Millbrook Park (former Inglis Barracks) (19/5827/FUL).

The planning application formed a further part of the significant new residential settlement on the former Inglis Barracks site known as Millbrook Park. The application site, which measures 0.42ha, is located in the south east corner of the Millbrook Park site and is immediately adjacent to the Frith Lane Scout Camp (Frith Grange Camp Site / Barnet Scout District HQ and Camp Site) and an area of retained woodland. The campsite and adjacent public woodland is designated green

belt land. The proposed development is not in accordance with the outline consent in terms of land uses and development parameters and therefore could not be taken forward pursuant to the original outline consent or an earlier drop in outline application for the phase – hence an application for a new standalone ‘drop-in’ planning permission was submitted (which itself follows refusal of an earlier scheme 18/6640/FUL, recently allowed on appeal on 20th May 2020).

On 22nd November 2019 an e-mail was received from the Barnet Borough Scout District Deputy Commissioner expressing significant concern about implications of the planning proposal for trees on the adjacent Scout land (particularly a row of trees extending on / along the boundary of the Barnet Borough Scouts District HQ and Camp Site and the development site), asking about them being considered for inclusion in an urgent Tree Preservation Order. He also said that he had commissioned an arboricultural report from Hallwood Associates which he subsequently forwarded (also sending copies to the Case Officer for the planning application and the Re Arboricultural Consultant providing him with advice).

Frith Grange Camp Site is owned by the Council and held on a long lease by the Scouts.

The Council as Local Planning Authority has power to make a Tree Preservation Order in the interests of amenity to provide for the preservation of trees or woodlands in their area (either initiating this process themselves or in response to a request made by any other party) and a statutory duty to make such Orders as appear necessary in connection with the grant of planning permission for any development to ensure that adequate provision is made, by the imposition of conditions, for the preservation or planting of trees.

It should be borne in mind that the making of the Tree Preservation Order and assessment of planning application for redevelopment are separate procedures. The inclusion of the trees in an 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). The inclusion of the trees in an Order would give 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.

It is understood that the Case Officer for the planning application and the Re Arboricultural Consultant had discussions with the Scouts’ representatives about the trees in the context of the planning application. These discussions were independent of the consideration of the Tree Preservation Order.

The Hallwood Associates’ report described the boundary trees to which he referred as “I would categorise the linear boundary group as B2 according to BS5837 and it is comprised of predominantly semi-mature common oak and ash to 12m in height and 400mm in stem diameter.” The report’s conclusion included “It would appear that the applicant has not commissioned arboricultural expertise when considering the design of Millbrook Park Phase 6B. This has led to an inappropriate design which, if

approved, will result in the likely loss of a valuable linear tree feature and the associated ecological and public amenity benefits it confers.”

On 19th December 2019, the agent for the planning application sent a document entitled “Millbrook Park Phase 6B Arboricultural Survey, Arboricultural Impact Assessment and Arboricultural Method Statement” dated November 2018 prepared by Thomson Ecology together with a letter providing clarifications on the updated consultation response (21st November 2019) from the Re Arboricultural Consultant. The Re Arboricultural Consultant forwarded these to the Case Officer dealing with the TPO request on 8th January 2020. The Thomson Ecology report included the following “To the north of the site is Frith Grange Scout Camp where the majority of trees are located. These trees are all located within the Scout Camp boundary and form a continuous green belt along the northern boundary.” The Tree Schedule assessed 15 individual and 1 group of trees along the boundary – 14 of the individuals (2 Pedunculate Oak, 10 Ash, 1 Hawthorn and 1 Lawson Cypress) were middle-aged and considered to be in good physiological and fair structural condition; their estimated heights ranging between 5 – 13 metres with stem diameters up to 320mm. The BS5837 categorisation of C1 seems to undervalue the trees, especially bearing in mind previous assessments.

Although the Hallwood Associates’ and Thomson Ecology reports refer only to the trees on the boundary, it should be noted that there is an extensive area of woodland at the Frith Grange Camp Site - indeed almost two thirds of the site is wooded and it is entirely enclosed by trees with the belt of trees extending up Frith Lane to the boundary with Inglis Way. The verdant character of this part of Frith Lane is increased given the wide belt of trees / woodland on the opposite side of the road standing at Finchley Golf Club (many of which are included in a separate Tree Preservation Order).

It should be observed that the former Inglis Barracks site was subject of an Area Action Plan, Environmental Impact Assessment, and various other surveys prior to the redevelopment of the new residential settlement “Mill Hill East” / “Millbrook Park”. Although these covered the whole wider Barrack site, the following relate in particular to the woodland in question:

Mill Hill East Environmental Impact Assessment (EIA) Scoping Report

5.159 The broadleaved woodland at the southern end of the site is a significant habitat of local importance. It is potentially of value for bats, birds, invertebrates and reptiles. Measures should be taken to retain this block of woodland as part of the proposed scheme.

5.171 There is a small area of woodland to the south east of the site and this lies alongside a Scout camp, both of which are proposed to be retained.

Extended Phase 1 Habitat Survey – November 2008

Executive Summary The woodland is considered to be of Borough importance and dense scrub of Local value. Consequently, it is recommended that the woodland, dense scrub habitats and standard trees be protected and retained during the proposed re-development of the site....

4.4.5 Broad-Leaved Woodland [– *more detailed analysis concluding:*] Aside from its value for protected species the woodland has intrinsic value. Consequently the woodland is considered to be of Borough value to nature conservation.

5. Preliminary Assessment of Impacts and Mitigation

5.2.3 Broad-Leaved Woodland – The broad-leaved woodland constitutes the most valuable ecological receptor on the site and has the potential to support a number of protected species including bats, invertebrates, breeding birds and protected flora. The loss or damage to this woodland would be considered a significant impact and as such it is strongly recommended that it be protected and retained as part of any subsequent re-development.

The EIA notes that the broadleaved woodland has a canopy dominated by Pedunculate Oak (*Quercus robur*), with occasional coniferous species whilst the understorey is characterised by abundant Holly (*Ilex aquifolium*), Hawthorn (*Crataegus monogyna*) and Bramble (*Rubus fruticosus* agg.), with an abundance of deadwood. Ground cover is dominated, in parts, by ivy which also forms a dense covering on a number of the more well established trees. The block of broadleaved woodland provides suitable foraging habitat for bats and potential badger sett building habitat. The broadleaved woodland at the southern end of the site is a potentially significant habitat of local importance. It is potentially of value for bats, birds, invertebrates and reptiles. Measures should be taken to retain this block of woodland.

The trees and woodland are very clearly visible from Frith Lane and from much of the Millbrook Park development – contributing significantly to softening the otherwise harsh built form; provide a sense of scale to the large multi-storey blocks; and provide seasonal interest. As noted above, they also of acknowledged ecological importance. It is believed that the collective public amenity value of the trees at the site is considerable and removal would have a significant negative impact on the local environment and its enjoyment by the public.

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.

National Planning Practice Guidance provides the following advice in respect of Tree Preservation Order categories:

“When should the woodland category be used?”

The woodland category’s purpose is to safeguard a woodland as a whole. So it follows that, while some trees may lack individual merit, all trees within a woodland that merits protection are protected and made subject to the same provisions and exemptions. In addition, trees and saplings which grow naturally or are planted within the woodland area after the Order is made are also protected by the Order.

It is unlikely to be appropriate to use the woodland classification in gardens.”

In the circumstances, it has been considered reasonable to designate the trees as a ‘woodland’ - with the boundary of the designated woodland including all of the Frith Grange Camp Site land and also the belt of trees on the Frith Lane frontage to the Inglis Way junction - as the trees have collective value in the context of Frith Lane and the wider Millbrook Park development.

As Frith Grange Camp Site is Council owned, in accordance with Council procedures, internal discussions have taken place with CSG Estates (responsible for the administration of Council owned property) who support the making of the Order. Given the redevelopment proposals, the making of the Tree Preservation Order was referred to the Service Director – Planning and Building Control who discussed the matter with the Case Officer for the planning application and agreed to the Order. The Re Arboricultural Consultant advising the Case Officer also supports the making of a ‘woodland’ Order. Although there was some delay in receiving relevant tree survey information, the Planning Committee was aware of the Tree Preservation Order being in force prior to determining application 19/5827/FUL.

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. Representations were received from the Barnet Borough Scout District Deputy Commissioner (who had initially requested a Tree Preservation Order).

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.

Some of the Scout Deputy Commissioner’s correspondence related to procedural queries and to development works; but the substantive matters in terms of the Order raised in his representations can be summarised as follows:

- *Shocked that Tree Preservation Order covered entire site as the initial request was intended to be an enquiry as to whether a TPO would be appropriate for a specific stand of approximately 17 trees*
- *Belief that on-site discussions should have taken place with the Scouts representatives prior to the making of the Order.*
- *“Monitoring of the woodland and the other trees is undertaken on a weekly basis by the Camp Warden and his crew and if an issue is spotted that is deemed a hazard or potential danger, it has in the past been dealt with immediately!..... we have to respond immediately and cannot be delayed, whilst somebody finds out if we can or cannot deal with the issue, with or without a piece of paper. This differs greatly from other sites, locations, gardens & woods, where the risk to children will be far less and more time is available to deal with bureaucracy.”*
- *“Regular clearing, trimming and coppicing that is required for safety & security purposes would be made virtually impossible to implement.”*
- *“The requirements imposed by the existence of such an extensive TPO would make [scout] training and long-term [woodland] management an impossible task and an administrative nightmare for a volunteer run organisation”*
- *“How can we be expected to work with a small team of volunteers for a hour or two over a weekend, when at each and every turn there is a question “is this allowed – is this legal?””*
- *The volunteers’ work “would be impeded greatly by having to operate within the strict confines of a TPO”*

- *“We are in the process of updating our Woodland Management Plan – a project that will be implemented....over a sustained period (mainly weekends) when training can be combined with practical woodland management.”*
- *“It had been our intention to plant out 300 saplings that are currently awaiting our volunteers but the existence of the TPO now casts doubt on the viability of this plan, if we are then going to be hampered by what we can do with nursery trees in the context of TPO rules!”*
- *“Frith Grange is a private site used by the 2000 or so members of Barnet Borough Scouts who use the facilities including the woodland throughout the year. It is not a ‘public access’ area.”*
- *“The woodland, in its current condition provides little or no amenity value, nor contributes much to the character and scenic interest of the area (our scout camp site)”*
- *“We would like you to kindly consider varying the Provisional Order 20/TPO/002 in as much as it refers only to Frith Grange Camp Site by lifting the Order in its entirety and instead place an Order/Orders on the trees identified on our Topographical Survey as being Numbers: 016 to 037 inc. (a total of 22 trees) and Numbers 051, 052, 055, 056, 057, 060, 061, 069, 087, 089 & 097 (a total of 11 trees) all being trees defining our boundaries.”*

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

- (i) As Government guidance makes clear, a Local Planning Authority can either initiate the making of a Tree Preservation Order itself or in response to a request made by any other party. In this particular case, the Barnet Borough Scout District Deputy Commissioner’s e-mail(s) making reference to a possible Tree Preservation Order coincided with concerns raised by Officers about implications of the development proposals on the trees and woodland - especially in the context of the earlier Area Action Plan, Environmental Impact Assessment and various other surveys prior to the redevelopment of Mill Hill East / Millbrook Park. It was therefore considered expedient in the interests of public amenity to make the Order and for it to be in force prior to the Planning Committee determining application 19/5827/FUL.
- (ii) As the statutory protection afforded to trees by a Tree Preservation Order does not come into effect until the Order is served, it is not appropriate to have on-site discussions in advance, as suggested in the representations. The legislative procedure is to make an Order which takes immediate effect for up to six months (“a Provisional Order”); to then serve notice on interested parties of the making of the Order, allowing them an opportunity to formally comment on the Order (“Regulation 5 Notice”); and for any duly received objections and representations to be considered in determining whether or not the Order should have lasting effect (“a Confirmed Order”). The purpose of this Committee Report is to summarise the representations received so that Members can determine whether the Order should be confirmed.

- (iii) The suggestion that the Order should not be confirmed because the usage of the site “*differs greatly from other sites, locations, gardens & woods, where the risk to children will be far less and more time is available to deal with bureaucracy*” does not reflect the diversity of LB Barnet’s Tree Preservation Orders. 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 / Akiva School 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. Stephens / Avenue House and Grounds); and parkland (e.g. Windsor Open Space). TPO treework submissions are currently received from such diverse applicants as individual householders, volunteers, estates bursars, churchwardens, and arboricultural agents.
- (iv) The concerns that urgent treework would be affected “*whilst somebody finds out if we can or cannot deal with the issue, with or without a piece of paper.*” seem somewhat exaggerated. The legislative provisions in respect of treeworks are not unduly complicated - explanatory information was provided at the same time as the copy Order and Regulation 5 letter; Officers have had various discussions with Scouts’ representatives; and it is understood that the Scout Camp is receiving arboricultural input from Capel Manor College’s Head of School Agriculture, Arboriculture, Environment and Wildlife Conservation.
- (v) The suggestion that urgent treework to remove an immediate danger would be delayed also seem excessive - although formal consent is required for most TPO treeworks, there are various exemptions which include the removal of deadwood, dead trees, and treework urgently necessary to remove an immediate risk of serious harm – and the explanatory information that accompanied the copy Order included a list of exemptions.
- (vi) The contention that the Tree Preservation Order should not be confirmed because of the variously expressed concerns that the existence of the Order would make “training and long-term management an impossible task and an administrative nightmare for a volunteer run organisation” is considered unreasonable. Especially in the light of the arboricultural input being received from Capel Manor, there seems no reason why a thorough survey of the trees at the site could not be undertaken with a list of treework recommendations and their priorities being drawn up – perhaps as part of the Woodland Management Plan. As a TPO treework consent is valid for up to two years, application(s) for a schedule of proposed treatments could then be submitted and the consented treework be implemented in stages as and when circumstances were appropriate. The Scouts’ representatives could decide whether a single submission or a series

of phased applications based on recommended priorities / timescales best suited their operation.

- (vii) If trees are unprotected, there would be no control over treatment – which would have two implications. Particularly in the light of the concerns raised by Scouts’ representatives about works being undertaken at the adjacent redevelopment site, there may be impacts on enforceability of tree-related conditions imposed on the planning permissions. Conversely, 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).
- (viii) Whilst the Scout Camp itself may not be a ‘public access area’, it is clear that it is well-used (“2000 or so”). Although there may not be direct access to the woodland by the public, it is very clearly visible from a large number of publicly accessible locations, such as Frith Lane and much of the Millbrook Park development. As set out above, the woodland’s public amenity value (softening built form; sense of scale to the large multi-storey blocks; seasonal interest; acknowledged ecological importance) extends far wider than “*our scout camp site*” with the belt of trees extending up Frith Lane to the boundary with Inglis Way and visually linking with the wide belt of trees / woodland on the opposite side of the road standing at Finchley Golf Club, contributing to the verdant character of this part of Frith Lane.
- (ix) The request that the Order be varied to just include 33 trees on 2 boundaries adjacent to redevelopment site (far side from Frith Lane) is considered inappropriate for two separate reasons. Such an Order would negate the public amenity value of the Woodland Order, acting to provide only a buffer between the Scout Camp and the redevelopment which, as the Scouts’ representative contends the Scout Camp is a private site, would be a private rather than public benefit. In addition, it would not be possible to confirm this Order if such a substantial change were to be made to it - even if such a drastic alteration to the Order were to be considered reasonable, which is disputed, it would be necessary to make a completely different Order.

It is considered that the making of the Woodland 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’.

2. EQUALITIES AND DIVERSITY ISSUES

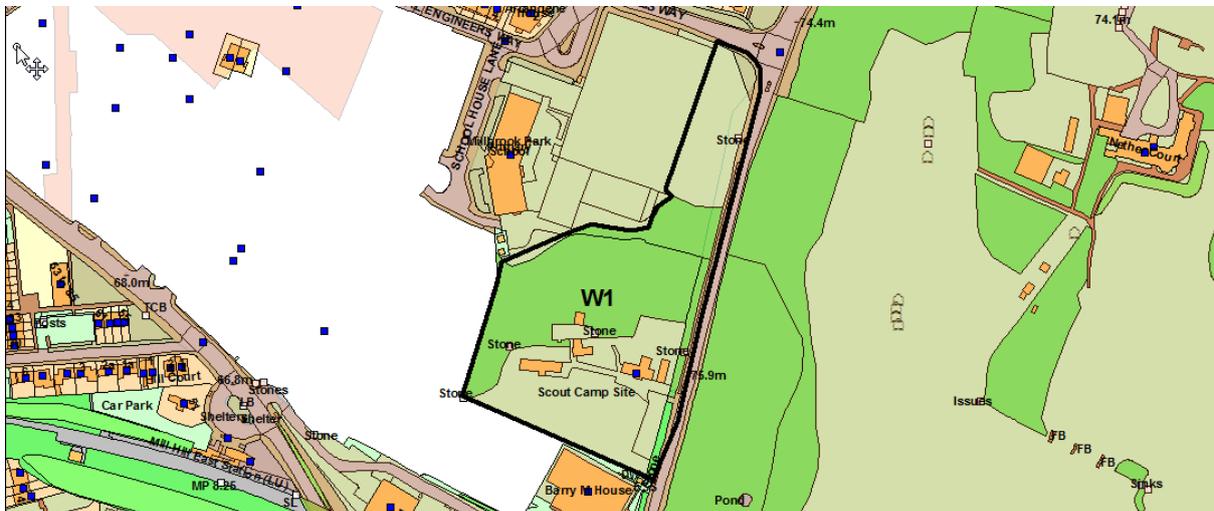
The Equality Act 2010 (the Act) came into force in April 2011. The general duty on public bodies requires the Council to have due regard to the need to eliminate discrimination and promote equality in relation to those with protected characteristics such as race, disability, and gender including gender 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. As set out above, it is considered the trees within the boundary of Woodland W1 identified in the Order contribute significantly to public amenity and given normal arboricultural attention are capable of providing amenity value for a considerable time.



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