



# Doncaster Council

## Report

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**Date: 28th May 2019**

**To the Chair and Members of the  
PLANNING COMMITTEE**

**Doncaster Borough Council Tree Preservation Order (No.407) 2018  
Mexborough Day Centre, Harlington Road, Mexborough, S64 0QG**

<b>Relevant Cabinet Member(s)</b>	<b>Wards Affected</b>	<b>Key Decision</b>	
Cllr C McGuinness	Mexborough	No	

### **EXECUTIVE SUMMARY**

1. The site has recently been subject to development pressure as part of the 18/01021/PREAPP and 18/02922/OUTM planning applications for 36 dwellings.
2. The Council made the above Tree Preservation Order (TPO), covering one common Lime, two False Acacia, eight Norway Maples, one Himalayan Birch and one Hornbeam on the 20<sup>th</sup> December 2019. The trees are protected as five individual trees and one group. This followed the Council's comments made at the time of the 18/01021/PREAPP application to the effect that the proposed development scheme appears to have given little or no regard to the existing trees on the site which would result in an unacceptable loss of trees which would significantly detrimental to the appearance of the area.
3. The TPO took provisional effect on 20<sup>th</sup> December 2019 and must be confirmed by 20<sup>th</sup> June 2019 to remain in force.
4. One objection to the TPO has been received from the developer, SPV Mexborough Ltd.
5. The decision whether to confirm the TPO is put before Members due to this objection. Members are required to give due consideration to the representation made when reaching their decision.

### **EXEMPT REPORT**

6. Not applicable.
- [www.doncaster.gov.uk](http://www.doncaster.gov.uk)

## RECOMMENDATIONS

7. It is recommended that Members confirm the TPO without modification.

## WHAT DOES THIS MEAN FOR THE CITIZENS OF DONCASTER?

8. There is growing recognition of the role that trees play in improving urban environments. As well as being pleasing to look at, trees provide numerous other benefits to the population and the environment as a whole. These benefits are known as 'ecosystem services' and include reduction of temperature extremes, intercepting heavy rain to reduce storm-water run-off, recycling carbon-dioxide, producing oxygen, filtering dust and airborne pollutants, providing shade from harmful ultra-violet radiation and supporting wildlife.
9. By its very nature, a TPO is an imposition on the property and the adjacent land. However, it is a method of control of land in much the same way as any planning permission. The ethos of the Town and Country Planning Acts since 1947 has been to safeguard the wider amenity of environs for the benefit of all residents. This control is, however, balanced by a right of application to carry out work to a protected tree and a right of independent appeal should the Council refuse proposed work. There is no charge for this process.

## BACKGROUND

10. In April 2018, the Council received a pre-application (ref. 18/01021/PREAPP) from the developer (SPV Mexborough Ltd). The pre-application process allows the Council to provide advice and feedback as to what the issues are and how to address them. As part of this process, the trees and hedgerows officer made the following comments on the 24<sup>th</sup> May 2018:

*"From the plans provided the scheme in its current iteration appears to have given little/no regard to the existing trees on the site and is either removing them or placing the building so close to them that they will inevitably cause conflict increasing the risk of their subsequent removal (trees/vegetation shown for retention along the Eastern boundary)."*

***Unfortunately, I would be unable to support the scheme as presented without significant redesign. The layout needs to be based on the findings of a Tree survey carried out by a competent arborist following the guidance in BS5837:2012 Trees in relation to design, demolition and construction.***

*The proposal then needs to suitably demonstrate that it can accommodate and protect the existing trees on the site that are worth retaining (i.e. those that are considered to be category rating A1/2 and B1/2 according to Table 1 Cascade chart for tree quality assessment within BS5837:2012) during the demolition of the existing building, the construction of the proposal (when eventually approved) and ensuring that potential risk of conflict with the new structures is minimised (for example secondary growth disturbing hard surfaces and branches touching buildings)."*

11. In February 2019, the Council received a major outline application (ref. 18/02922/OUTM) from the developer (SPV Mexborough Ltd.), which was accompanied by a tree survey in accordance with *British Standard BS 5837:2012 Trees in relation to design, demolition and construction. Recommendations* and an arboricultural impact assessment.
12. The tree survey identified a total of 23 individual trees and three groups of trees; seven category A trees, 11 category B trees and four category C trees and one category C group.
13. The development, as proposed, would require the removal of 16 trees and one group as a result of the trees conflicting directly with the footprint of proposed buildings and access roads. These include six category A trees and six category B trees (along with four category C trees and one category C group).
14. As part of the planning process the Council has attempted to work with the developer and the agent to resolve the issues with trees and to find a reasonable compromise between the need for development and need to retain, as appropriate, the better trees at the site.
15. The Council's stance on this matter has been consistent since the time of the 18/01021/PREAPP application and, yet the proposal submitted for the 18/02922/OUTM application unfortunately demonstrates that the developer has chosen not to heed the pre-application advice relating to trees and, this being the case, the Council was left with no option other than to serve the TPO to protect the best trees at the site. The trees included in the TPO are fine amenity specimens, which are notably prominent in the street scene of this part of Mexborough and the surrounding streets.
16. It is not the Local Planning Authority's intention to prevent re-development of the site. Although it is acknowledged that the retention of trees will constrain future development of the land, the Local Planning Authority will continue to work with the developer to produce a development layout that appropriately balances tree retention and planting and the future use of the site. In addition, the Order will reinforce any planning conditions applied to any future planning permission to develop the site to protect the trees during development in accordance with section 197 of the Town and Country Planning Act 1990 (as amended). It is also acknowledged that periodic pruning of the trees may be needed in the future and works would be permitted (subject to an application for consent) that are considered to be necessary and in accordance with good arboricultural practice and would not diminish the amenity value or environmental benefits of the trees.
17. The TPO, which confers statutory protection on the trees was made by Legal Services and served on 20<sup>th</sup> December 2018 on the tree owner and the agent. The TPO takes provisional effect for six months and will lapse and be of no further effect if it is not confirmed by 20<sup>th</sup> June 2019.
18. The decision on confirming the TPO is put before members due to objection to the making of the order. Members are required to give due consideration to the representations made in respect of this order when reaching their decision. These are set out under consultation (sections 30 - 47 of the report).

## OPTIONS CONSIDERED

19. Option 1 (Preferred Option): That after due consideration of the representations made, the TPO be confirmed without modification, and the interested parties be notified of the decision. This is the recommended option.
20. Option 2: That after due consideration of the representations made that the TPO is not confirmed, and the interested parties are notified of the decision. This option is not recommended.

## REASONS FOR RECOMMENDED OPTION

21. The Council has a duty under section 197 of the Town and Country Planning Act 1990 (as amended) to make provision for the protection of trees through the planning process.
22. The trees subject to the TPO are prominent in the street scene of this part of Mexborough and the surrounding streets (including Bronte Grove, Sandown Road, Tennyson Avenue, Adwick Road, Derwent Road and Chaucer Road) and are considered to be under threat of being lost to development.

## IMPACT ON THE COUNCIL'S KEY OUTCOMES

	Outcomes	Implications
	<p><b>Doncaster Working:</b> Our vision is for more people to be able to pursue their ambitions through work that gives them and Doncaster a brighter and prosperous future;</p> <ul style="list-style-type: none"><li>• Better access to good fulfilling work</li><li>• Doncaster businesses are supported to flourish</li><li>• Inward Investment</li></ul>	
	<p><b>Doncaster Living:</b> Our vision is for Doncaster's people to live in a borough that is vibrant and full of opportunity, where people enjoy spending time;</p> <ul style="list-style-type: none"><li>• The town centres are the beating heart of Doncaster</li><li>• More people can live in a good quality, affordable home</li><li>• Healthy and Vibrant Communities through Physical Activity and Sport</li><li>• Everyone takes responsibility for keeping Doncaster Clean</li><li>• Building on our cultural, artistic and sporting heritage</li></ul>	<p>There is a strong causal link between greenery and lower crime rates and an enhanced sense of community. Research shows that even modest amounts of greenery are associated with lower crime rates by helping people to relax and by reducing levels of aggression. High quality green spaces increase the tendency to bring people together outdoors, increasing surveillance, discouraging crime and fostering a sense of pride and 'ownership'. There is also strong evidence that the presence of green</p>

		<p>infrastructure improves people's health and well-being, through improved air quality and providing an environment to encourage activity.</p> <p>The protection of mature trees is a key component of maintaining the quality of our green infrastructure and will help to protect the environment for current and future generations. This also forms a key part of our response to climate change (including addressing the risk of flooding and improving air quality and other 'ecosystem services').</p>
	<p><b>Doncaster Learning:</b> Our vision is for learning that prepares all children, young people and adults for a life that is fulfilling;</p> <ul style="list-style-type: none"> <li>• Every child has life-changing learning experiences within and beyond school</li> <li>• Many more great teachers work in Doncaster Schools that are good or better</li> <li>• Learning in Doncaster prepares young people for the world of work</li> </ul>	
	<p><b>Doncaster Caring:</b> Our vision is for a borough that cares together for its most vulnerable residents;</p> <ul style="list-style-type: none"> <li>• Children have the best start in life</li> <li>• Vulnerable families and individuals have support from someone they trust</li> <li>• Older people can live well and independently in their own homes</li> </ul>	
	<p><b>Connected Council:</b></p> <ul style="list-style-type: none"> <li>• A modern, efficient and flexible workforce</li> <li>• Modern, accessible customer interactions</li> <li>• Operating within our resources and delivering value for money</li> <li>• A co-ordinated, whole person, whole life focus on the needs and aspirations of residents</li> </ul>	

	<ul style="list-style-type: none"> <li>• Building community resilience and self-reliance by connecting community assets and strengths</li> <li>• Working with our partners and residents to provide effective leadership and governance</li> </ul>	
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## **RISKS AND ASSUMPTIONS**

23. Not applicable

## **LEGAL IMPLICATIONS [Officer Initials: HL; Date: 15/05/2019]**

24. Regulation 7(1) of the Town and Country Planning (Tree Preservation) (England) Regulations 2012 states that “the authority shall not confirm an order which they have made unless they have first considered objections and representations duly made in respect of it and not withdrawn”. Members are required to give due consideration to the representations made in respect of this order. These are set out in paragraphs 30-47 of this report, along with the case officer’s responses.

## **FINANCIAL IMPLICATIONS [Officer Initials: BC; Date: 10/05/2019]**

25. There are no financial implications to the recommendation of this report.

## **HUMAN RESOURCES IMPLICATIONS [Officer Initials: DK; Date: 15/05/2019]**

26. There are no human resources implications in relation to this Planning Committee report and proposed preservation order.

## **TECHNOLOGY IMPLICATIONS [Officer Initials: PW; Date: 13/05/2019]**

27. There are no technology implications in relation to this report.

## **HEALTH IMPLICATIONS [Officer Initials: CT; Date: 13/05/2019]**

28. There is a plethora of evidence to support the health benefits of trees and tree cover including those that are located in urban areas. There are positive health effects of viewing natural landscapes (including trees) on stress levels and speed of recovery from stress or mental fatigue, faster physical recovery from illness and long term overall improvement on people's health and well-being are reported. The wider benefits of trees on health include the positive measureable impact on air quality, the reduction in the impact of the ‘urban heat island effect’, reduction in the likelihood of surface water flooding and the potential to reduce noise pollution. These benefits for the wider community could be affected if trees are to be removed completely from an urban area. With this in mind Public Health supports Option 1 (the preferred option).

## **EQUALITY IMPLICATIONS [Officer Initials: DA; Date: 10/05/2019]**

29. There are no equality implications.

## CONSULTATION

30. The persons on whom the TPO was served were duly notified of the reasons for making the order along with the period allowed for objections and the form that any objections or representations should take.
31. The period for objections closed on 27<sup>th</sup> January 2019. The developer has submitted a letter of objection.
32. The following is a summary of the issues raised in the letter of objection and the case officer's responses below each point in italics.
33. The development justifies the removal of the existing trees in order to contribute to quality housing and the need for housing.
34. *The authority's consent is not required for carrying out work on trees subject to an Order as far as such work is necessary to implement a full planning permission. For example, the Order is overridden if a tree has to be removed to make way for a new building for which full planning permission has been granted. As a result, if there were such a significant need for the development in its current form, so much, so that it outweighs the value of the existing trees the creation of the order would not impede the planning application being granted.*
35. The tree preservation order makes the proposal unviable.
36. *The council is happy to discuss an alternative proposal providing it affords better consideration to the existing trees.*
37. The trees within the proposed Tree Preservation Order have a life expectancy of between 20-40 years whereas the development would be standing for 100+ years and hence should outweigh the proposed TPO.
38. *For the remaining years' estimate placed on the trees by the tree survey and impact assessment, in terms of assessing tree quality, the survey and the council's tree officers are constrained by the parameters of BS5837:2012 Trees in relation design, demolition and construction guidance for assessing the value of trees and for the remaining life expectancy. The council would point out that in view of the natural life span of the trees at the site (centuries in most cases depending on the species of the tree) that the emphasis is very much on "at least" in the BS5837:2012 statement. So the trees estimated to remain viable on the site "at least 40 years" have the potential to remain for a significantly longer period.*
39. The trees on site have been carefully considered and the proposed design, along with the revised tree-planting scheme, aims to strike a good balance between a site, which would be viable to develop with the right amount of housing units and improve visual amenity with good quality trees spread across the site.
40. *The council disagrees that the proposal has "been carefully considered" with regards to the existing trees on the site. This is because it appears that the tree survey was undertaken after a detailed design and layout had already been prepared. The pre-application plans submitted with 18/01021/PREAPP were received in April 2018 but the tree survey was undertaken three*

*months later in July 2018. In view of the almost identical nature of the site plan for 18/02922/OUTM to that of 18/01021/PREAPP, it is clear that trees have not been carefully considered. This accounts for the high loss of category A and B trees.*

41. The new revised planting scheme establishes a greater number of trees on site than present and hence will increase the amenity value of the site and the surrounding area.
42. *In addition to the duty imposed upon the Council by section 197 of the Town and Country Planning Act (as amended), the Council's adopted Core Strategy Policy CS16, saved UDP policy ENV59 and Draft Local Plan Policy 33 all seek to retain and protect trees, as appropriate, through the planning process. Whilst, in theory, the value and environmental services of large established trees can be replaced (over time) by new planting, not only does this run contrary to the above policies, in reality, it is a disappointing approach that does not acknowledge the trees' constraints and makes no effort to attempt to strike a reasonable balance between development and tree retention.*
43. Prior to submitting the plans for outline planning permission for the site we have been in continuous discussions with Doncaster Planning Department via a pre-application process to determine the density and type of residential development that the Council would be happy with bearing in mind the need for us as developers to make it financially viable. Our initial designs were for a development of 44 dwellings but through our pre-application discussions, our revised plans are for a reduced development of 38 dwellings, which hopefully addressed most of the concerns raised during the pre-application discussions with the Council's representatives from highways, planning and urban design.
44. *For the pre-application consultation (18/01021/PREAPP) Trees and Hedgerows provided a consultation on the proposal advising that:*
45. *"Unfortunately, I would be unable to support the scheme as presented without significant redesign. The layout needs to be based on the findings of a Tree survey carried out by a competent arborist following the guidance in BS5837:2012 Trees in relation to design, demolition and construction." "The proposal then needs to suitably demonstrate that it can accommodate and protect the existing trees on the site that are worth retaining (i.e. those that are considered to be category rating A1/2 and B1/2 according to Table 1 Cascade chart for tree quality assessment within BS5837:2012) during the demolition of the existing building, the construction of the proposal (when eventually approved) and ensuring that potential risk of conflict with the new structures is minimized."*
46. We feel that the proposed TPO seems wholly unjust and would like to add that even though we knew that the site was not in a conservation area or that none of the trees were previously under a Tree Preservation Order at no time did we consider cutting them down or removing them even though we have always been aware that for this development to be viable we would have to remove some trees. During the pre-application discussions we had discussions with regards to a tree planting scheme for the site that would see us planting more trees than would be removed plus the possibility of



planting a number of trees off site around Doncaster and this was positively received.

47. *It is appreciated that the existing trees were not removed prior to the application being received. The TPO was not immediately served after the 18/01021/PREAPP application when the trees first appeared to be under threat and the opportunity was given for the developer to address the tree issue raised. The Council encourage applicants and agents to obtain pre-application advice before submitting a formal planning application and hopes to work with applicants and agents to resolve conflicting issues. The TPO was only served after the outline application (18/02922/OUTM) was submitted when it became apparent that the applicant did not wish to take heed of the findings of the pre-application process that they themselves has initiated.*

## **BACKGROUND PAPERS**

Site plan with trees plotted (Appendix 1)

Erection of 44 dwellings following demolition of existing day centre building (ref. 18/01021/PREAPP)

Outline application for 36 houses (approval being sought for access, appearance, layout and scale). (ref. 18/02922/OUTM)

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Doncaster Unitary Development Plan (UDP) adopted 1998

Doncaster Council Core Strategy 2011-2028

The emerging Doncaster Local Plan

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