AGENDA ITEM NO. 5(b)

PLANNING COMMITTEE – 9 JULY 2014

SUBJECT: **TOWN AND COUNTRY PLANNING ACT 1990 – OBJECTION TO CAERPHILLY COUNTY BOROUGH COUNCIL TREE PRESERVATION ORDER 74 OF 2014 – LAND TO THE REAR OF BRYNMYNACH AVENUE, YSTRAD MYNACH**

REPORT BY: **DIRECTOR OF THE ENVIRONMENT**

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1. INTRODUCTION

1.1 An application for planning consent was submitted to the Local Planning Authority on 19th December 2013 to develop the land to the rear of Brynmynach Avenue, Ystrad Mynach, Hengoed for 4 detached houses with integral garages. As part of the determination process the site was visited by the Council's Arboricultural Officer to assess the impact that the development would have on the trees that occupy the site. As a result of this visit it was decided that a Tree Preservation Order should be served in respect of the trees as they make an important contribution to the visual amenity of the area.

1.2 Welsh Government Technical Advice Note (TAN) 9 (1997) states that:

"Local Planning Authorities are empowered, in the interests of amenity, to protect trees and woodlands by making Tree Preservation Orders (TPO's)."

1.3 The Town and Country Planning Act does not define 'amenity', nor does it prescribe the circumstances in which it is in the interests of amenity to make a TPO. In Welsh Government's view, TPO's should be used to protect trees and woodlands if their removal would have a significant impact on the environment and its enjoyment by the public. The trees, or at least part of them, should therefore normally be visible from a public place, such as a road or footpath, or from a reasonable number of neighbouring properties.

2. THE PROPOSED TREE PRESERVATION ORDER

2.1 On 10th January 2014 Caerphilly County Borough Council made a Tree Preservation Order (TPO) on a five groups of trees situated within the land to the rear of Brynmynach Avenue, Ystrad Mynach, Hengoed. An extract of the TPO is attached (Appendix A). The Groups are described as follows:-

G1 Mixed Species (incl. Cherry Laurel)
G2 Willow (x 3no.)
G3 Birch (x 2no.)
G4 Goat Willow
G5 Cherry Laurel

2.2 The provisional TPO was served on the following person:-

Mrs Nicola John
16 Brynmynach Avenue
Ystrad Mynach
Hengoed
CF82 7DB

2.3 Following correspondence with Mrs John regarding the possibility of cutting down some of the trees it became evident that the Order had been served at the incorrect address and as such it was re-served under cover letter to the following person:-

Mrs Nicola John
16 Brynview Avenue
Ystrad Mynach
Hengoed
CF82 7DB

2.4 It should be noted that the TPO was served on the basis of an assessment of the trees carried out only from publicly accessible vantage points (i.e. Brynmynach Avenue, and Ystrad Mynach Railway Station), as it was considered that it may not be prudent to 'advertise' the assessment of the trees to the land owner by entering their land to assess them more closely. There would be a possibility that a tree or trees could be removed before a TPO had been prepared and served provisionally. Therefore it was considered expedient, and in the interests of the Local Planning Authority, that the risk of some of these trees being felled justified the serving of the TPO before being able to assess fully the amenity value of the trees.

2.5 The assessment of the trees was carried out using a system called TEMPO, which is nationally recognised.

3. OBJECTION TO THE SERVICE OF THE TREE PRESERVATION ORDER

3.1 Following the service of the TPO a letter of objection to the TPO was received from Mr Alan Webster, Senior Arboricultural Consultant for Tree Works (West Wales) Ltd. The letter was supported by an assessment of the trees using TEMPO, with Mr Webster having been able to enter the site and carry out a more in depth survey.

3.2 The objections are based on the following points specific to each group:-

G1	(i)	The Schedule does not specify the number of trees as required by legislation.
	(ii)	The trees are of poor form and limited retention span.
G2	(i)	The species detail in Schedule 1 is inaccurate as there are only two willow trees in the indicated area not three.
G3	(i)	The species detail in Schedule 1 is inaccurate as there are three birch trees in the indicated area not two.
G4	(i)	The Schedule does not specify the number of trees as required by legislation.
	(ii)	The goat willow in the area identified in the plan is of poor form and limited retention span.
G5	(i)	The Schedule does not specify the number of trees as required by legislation.

3.3 The following objections have also been raised in respect of all of the groups:-

(i) The TPO is not expedient due to the protection afforded to the trees in the planning process as detailed in the Local Development Plan.
(ii) The TPO is not expedient as the trees are on land in the ownership of Network Rail and as such they are under good arboricultural management.

4. COMMENTS ON OBJECTION TO TREE PRESERVATION ORDER

4.1 The comments are offered in respect of the objections raised.

G1 (i) It is accepted that the number of trees has not been specified for group G1 in the schedule. However it is considered that this could be amended should the TPO be confirmed.

(ii) However, having considered Mr Webster's assessment of the trees it is considered that his TEMPO score of 8 (does not merit TPO) is appropriate. **Therefore it is recommended that group G1 be removed from Schedule 1 if the TPO is confirmed.**

G2 (i) It is accepted that there is some confusion as to the number of willow trees being present within this group and this is likely to be due to the fact that the Council's inspection was carried out from outside the site. However it is considered that this could be amended should the TPO be confirmed.

(ii) Reference is made to the Willows' life expectancy being listed by the Arboricultural Association as between 50-70 years. Whilst these Willows may be mature and there are also issues with the species' typical tight forks, the trees can be appropriately managed with professional arboricultural advice. They may possibly be entered in the future into a cycle of appropriate crown reduction, pruning, or removed and replaced if that becomes the more appropriate option arboriculturally. Without the TPO though, there would not be any ability to require suitable replacement planting at or near that location should these trees' removal ever become necessary.

(iii) Having considered Mr Webster's TEMPO evaluation of this group, the arrived at score of 14 ("TPO defensible"), is not supported and a score of 16 ("Definitely merits TPO") is more appropriate. The difference is primarily because one extra point is attributed in the section "Retention span and suitability for TPO" as it considered that a 20-40 year span is reasonably attainable provided the trees are managed appropriately, as opposed to Mr Webster's assessment of a 10-20 year span. One point is also attributed in the section on "Expediency" as it is consider that the threat to the tree as "foreseeable" as opposed to "perceived" - as evidenced by the applicant's request to remove the trees mentioned above and also by the objection to this TPO. **It is therefore recommended that Group "G2" be modified appropriately and remain included in Schedule 1 if the TPO is confirmed.**

G3 (i) It is accepted that there is some confusion as to the number of birch trees being present within this group and this is likely to be due to the fact that the Council's inspection was carried out from outside the site. However it is considered that this could be amended should the TPO be confirmed.

G4 (i) It is accepted that the number of trees has not been specified for group G4 in the schedule. However it is considered that this could be amended should the TPO be confirmed.

(ii) However, having considered Mr Webster's assessment of the trees it is considered that his TEMPO score of 4 (TPO indefensible) is appropriate. **Therefore it is recommended that group G4 be removed from Schedule 1 if the TPO is confirmed.**

G5 (i) It is accepted that the number of trees has not been specified for group G5 in the schedule. However it is considered that this could be amended should the TPO be confirmed.

4.2 In respect of the general issues raised I would comment as follows:-

(i) Planning legislation does not prevent the removal of trees from a development site unless they are protected by a Tree Preservation Order or by a condition attached to a planning consent. In this instance it was clear that the trees in question were in danger of being removed from the site as evidenced by the level of development proposed on the site and the applicant's request to remove them. Even when a planning application is being considered by the Local Planning Authority there is nothing to prevent a developer from removing any trees from the site without the consent of the Local Planning Authority.

Moreover, the planning application submitted for this site was, in the opinion of the Local Planning Authority, deficient in a number of respects and as such planning consent was unlikely to be granted. This meant that the Local Planning Authority would have no control over the removal of any of the trees on the site in the future without the service of the Tree Preservation Order. In that regard it is considered that the service of the TPO was fully justified in this instance.

(ii) The fact that some of the trees may be on land owned by Network Rail and as such under good arboricultural management is not in itself a valid reason to object to the TPO. There is no provision in the regulations that states that a tree or group of trees on railway land may not be protected by a TPO if it were considered expedient by the LPA to do so. While it is understood that the railway authority is a statutory undertaker, and as such exempt from the need to obtain LPA consent prior to the necessary removal or pruning of protected trees, the protection afforded to trees by a TPO would ensure that a neighbouring property owner would need to obtain consent from the LPA prior to the removal or pruning of such trees. Furthermore, a protected tree would remain a material consideration in any ongoing or future planning application.

5. CONCLUSION

5.1 In conclusion it is considered that the service of the TPO is justified in order to protect the visual and residential amenity of the area as the trees provide an effective visual screen between the residential dwellings and the railway line to the south. The trees have been assessed by the Council's Arboricultural Officer and by an independent Arboricultural Consultant and groups G2, G3 and G5 are considered to be worthy of protection. It is accepted that groups G1 and G4 are not considered worthy of protection after closer inspection and as such Schedule 1 should be amended accordingly.

6. RECOMMENDATION

6.1 It is recommended that Caerphilly County Borough Council Tree Preservation Order 74 of 2014 should be confirmed with modifications to Schedule 1 as follows:-

G1 Removed
G2 Willow (x 2no.)
G3 Birch (x 3no.)
G4 Removed
G5 Cherry Laurel