



## LAND SOUTH OF HASSALL ROAD

## WINTERLEY

# OBJECTION TO CHESHIRE EAST BOROUGH COUNCIL (HASLINGTON - WINTERLEY, LAND TO THE NORTH OF POOL LANE) TREE PRESERVATION ORDER 2017

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Document Title	Objection to Cheshire East Borough Council (Haslington - Winterley, Land to the north of Pool lane) Tree Preservation Order 2017
Prepared for	HIMOR Group Ltd
Prepared by	TEP - Warrington
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## 1.0 Instruction

- 1.1 I am instructed by Mr Gareth Salthouse of Emery Planning, 2-4 South Park Court Hobson Street, Macclesfield, SK11 8BS to make an objection to the making of the above Tree Preservation Order in respect of land in which his client Mr Peter Ainscough of HIMOR Group Ltd has an interest. In accordance with regulation 6 of the Town and Country Planning (Tree Preservation) (England) Regulations 2012, this document specifies the trees about which objection is made and the grounds of objection; being a lack of expediency.

## 2.0 Formal Objection

- 2.1 Cheshire East Borough Council (hereafter “The Council”) made Tree Preservation Order *Haslington - Winterley Land to the North of Pool Lane, Tree Preservation Order 2017* (hereafter “The Order”) on 22nd May 2016. Trees included in Schedule 1 of the Order are on land in which HIMOR Group Ltd has an interest.
- 2.2 In accordance with Regulation 6 of The Town and Country Planning (Tree Preservation) (England) Regulations 2012 (“The Regulations”), this document is an objection by Footprint Land and Development Ltd to the making of the Order.
- 2.3 The grounds of objection are a lack of expedience. The grounds are detailed in the following section.
- 2.4 The objection is made in relation to some but not all of the trees included in Schedule 1 of the Order. These are identified in the following section.

## 3.0 Grounds of Objection

### **Trees to which this objection relates**

- 3.1 The Order as made covers land that can be broadly described by the four agricultural fields it has historically comprised. Residential development of the two fields to the south (adjacent to Pool Lane) is progressing with the westernmost of the two under construction and the easternmost of the two having outline planning permission. A central field does not have planning permission.
- 3.2 This objection relates to a fourth field in the north east of the Order area and immediately to the east of the central field (hereafter "the objection site"). This objection is made in respect of trees within this parcel of land: in particular, trees T6, T7, T8, T9, T10, T11 and T12 and group G6 (references as per the Order).

### **Context**

- 3.3 An outline planning application for residential development of the objection site was allowed at appeal (APP/R0660/W/16/3163461). An arboricultural assessment was undertaken and submitted as part of the original application (15/2844N).
- 3.4 The assessment concluded that all trees which would be protected by this Order can be retained within the context of development. The illustrative layout demonstrated this outcome.
- 3.5 Table 1 provides a comparison and cross references between the tree references used in The Order and those in the Arboricultural Assessment (TEP.5067.001).

Table 1 Comparison between TPO and Arboricultural Assessment

Order Reference number	AIA tree survey reference (TEP.5067.001)	Species (common name)	BS 5837: 2012 quality category	Application 15/2844N proposals
T6	T1	Oak	A	Prune failed limbs in canopy
T7	T2	Silver birch	A	Retain
T8	T4	Oak	B	Retain
T9	G4 (one tree)	Silver birch	B	Retain
T10	T5	Oak	A	Retain
T11	G5 (one tree)	Oak	B	Retain
T12	T8	Weeping willow	A	Retain
G6	G6	Hybrid poplar	B	Retain

### Site history

- 3.6 Trees within the objection site are under responsible management. There is no threat to their continued presence and wellbeing that could reasonably be inferred from the current agricultural land use.
- 3.7 There is no history of irresponsible tree management on the objection site. It has been under stable ownership and management, which has allowed the existing trees of quality and amenity to develop.

### Expedience

- 3.8 The Town and Country Planning Act 1990, Chapter 1, Section 198 states, '*If it appears to a local planning authority that it is expedient in the interests of amenity to make provision for the preservation of trees or woodlands in their area, they may for that purpose make an order with respect to such trees, groups of trees or woodlands as may be specified in the order.*' The principal prerequisite for the making a Tree Preservation Order is not solely the amenity of the trees, which is not disputed, but that doing so must be expedient.

- 3.9 The Government's planning practise guidance comments on the interpretation of 'expedience' as follows, '*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... ...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.*' In other words, expedience relates to an identified or perceived need for control where there would otherwise be none in respect of amenity assets. To be expedient, an order must be effective (i.e. it must make a practical difference) and it must be justifiable (i.e. it must respond to a real or perceived threat of tree works occurring).
- 3.10 BS 5837:2012 provides specific recommendations and guidance on the relationship between trees, design, demolition and construction processes. Fundamentally, it requires an accurate presentation of the number and quality of trees affected by development. This forms the baseline against which effects should be assessed. In my experience, this guidance is universally applied by local planning authorities across England as the standard for the survey, valuation, impact assessment and protection of trees in relation to development. It reflects current best practice, scientific understanding of tree function and biology and new technologies that may allow successful integration of trees and new structures. BS 5837:2012 is cited by the Planning Portal, and local and national planning policy. No other recognised standards or published methods for the production of tree survey reports suitable to support a planning application made in the UK exist.
- 3.11 At paragraph 5.2.3, BS 5837 states that '*The following factors should also be taken into account during the design process: a) the presence of tree preservation orders, conservation areas or other regulatory protection*'.
- 3.12 The quality of trees covered by the Order is not disputed. The arboricultural assessment found that trees meet the criteria in BS 5837 for moderate or high quality. Any future submission to discharge reserved matters on the objection site would be required to comply with the recommendations of BS 5837 in terms of provision of information and can make no attempt to disguise the effect of the proposed development on trees. Any proposed tree works (including removal) would be weighed in the planning balance and considered as part of that application on its merits. In considering an application, the LPA has an opportunity for both the consideration of tree retention and the securing of mitigation in respect of approved tree removal. The making of an Order is therefore not expedient in respect of any current planning consent, application or any perceived threat to trees arising by future applications which may or may not arise.



- 3.13 At Annex B, BS 5837 states that '*Under the UK planning system, local authorities have a statutory duty to consider the protection and planting of trees when granting planning permission for proposed development. The potential effect of development on trees, whether statutorily protected (e.g. by a tree preservation order or by their inclusion within a conservation area) or not, is a material consideration that is taken into account in dealing with planning applications.*' All trees are a material consideration in the planning process and the creation of a TPO does nothing to add to increase the protection of trees until after the development is complete or the application has been refused. Prior to this, an applicant is prevented from removing trees either by virtue of the granted consent and conditions, or by the prospect of necessitating a material amendment to the submitted application which would increase the liability to failure and cause delay and cost. This would not be in the interests of the landowner or developer and it is therefore not reasonable to make an Order on the grounds that this could occur. The Order achieves no protection that is not already afforded by the planning process and is therefore not expedient.
- 3.14 The duty of the LPA to make provision for the protection of trees is established in The Town and Country Planning Act 1990, Chapter 1, Section 197; '*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.*' This establishes that planning conditions are the primary mechanism by which the preservation of trees should be secured in the context of a planning permission.
- 3.15 Section 197 establishes that Tree Preservation Orders should be made only where necessary and in connection with the grant of such permissions (i.e. they should not be made during the planning process but after consent is granted to control tree works outside of the development context). The Order does not meet either of these requirements; no detailed consent has been granted in respect of any trees and it is not necessary to make an order in respect of trees which the applicant has already committed to protecting or the management of which is already under consideration.
- 3.16 If the Council is intent on making an Order in response to an anticipated future Reserved Matters submissions on the objection site, it would be common sense to make it at the time of Reserved Matters approvals. It may thereafter be considered expedient in the interests of amenity to make a Tree Preservation Order in respect of remaining trees to secure their long-term protection. It is therefore suggested that the appropriate time to create an order would be following the determination of reserved matters, at which point such an order could be duly considered in compliance with the law, guidance and regulations. The current Order cannot and presents an obfuscation to the planning process. It also has little or no effect in terms of increasing or securing tree preservation at the present time.

### **Concluding statement**

- 3.17 The management of all trees can be secured through the planning process and the Order therefore has no effect and is not expedient.
- 3.18 All trees covered by the Order are shown as being retained within the context of the proposed development. There is therefore no threat to the trees. There is therefore no justification for the making of an Order and it is not expedient.
- 3.19 All other trees within the objection site are under responsible management and there is no reasonable grounds for inferring a threat to their continued presence and condition. The Order is therefore unnecessary and is not expedient.
- 3.20 The order has limited practical effect in the context of a pending application and is therefore not expedient. The making of an Order prejudices and obfuscates the planning process by introducing a material consideration after outline consent has been granted but before Reserved Matters have been discharged and therefore does not follow the Government's guidance which is that such Orders should be made in connection with the grant of development consent where necessary in addition to planning conditions.
- 3.21 In consideration of these points, an objection is made to the Order and a respectful request that it be revoked or modified to exclude those trees listed in paragraph 3.2.



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