Wards: Coleman and Evington

DEVELOPMENT CONTROL COMMITTEE

Date: 3rd February 2004

REVOCATION OF TREE PRESERVATION ORDER N4.014
TILOTON DISUSED RAILWAY LINE

Report of the Service Director, Community Protection & Wellbeing

1 Summary
A Tree Preservation Order relating to trees along the disused Tilton Railway Line was made in 1971. As part of an ongoing programme of reviewing and keeping Tree Preservation Orders up-to-date, this Order was revoked on 20th October 2003. The reasons for the revocation were that most of the trees are in the ownership and control of the City Council, many of the trees are difficult to see from public places, and the Order would be difficult to enforce. Letters were sent to 143 addresses advising them of the revocation. More than 40 letters have been received objecting to the revocation and requesting that it be reinstated. There appears to be concern that the revocation is a first step towards the development of the railway line. This is unfounded. This report sets out the current situation and seeks members’ endorsement of the action taken to revoke the TPO.

2 Recommendations
I recommend that members:

1. Endorse the revocation of the Tree Preservation Order.

   Alternatively, (and members should be mindful that the Order would effectively be impossible to police and rely on good will and respect for the law) they may wish to:

2. Endorse the revocation of the Tree Preservation Order with respect to land in the ownership of the City Council, and

3. make a Woodland Tree Preservation Order to protect trees in private ownership along the disused Tilton Railway Line.

3 Financial Implications
None.
4 Report

4.1 Making Tree Preservation Orders
The Town and Country Planning Act empowers local authorities to make Tree Preservation Orders (TPOs) in the interests of amenity when it is expedient to do so. The Act does not define amenity, but published guidance states that, in the view of the Secretary of State, TPOs should be used to protect selected trees and woodlands if their removal would have a significant impact on the local environment and its enjoyment by the public. There is no provision for TPOs to be made in the interests of wildlife or nature conservation, but the guidance states that, “other factors, such as importance as wildlife habitat, may be taken into account, which alone would not be sufficient to warrant a TPO”. It also states that local authorities should be able to justify their decisions to make TPOs in terms of the visibility and impact of the trees.

Expediency is normally related to a threat to the trees, either from development pressure or for other reasons. The guidance states that it is unlikely to be expedient to make a TPO in respect of trees that are under good management. When a TPO is made, it does not mean that the subject tree cannot be touched in any circumstances. It means that the authority’s consent is required before it is felled, lopped or pruned. A TPO cannot protect any tree that is dead or dying, or that has become dangerous.

4.2 Reviewing, Revoking and Modifying Tree Preservation Orders
Central Government guidance advises authorities to keep their TPOs under review and to make full use of their powers to vary and revoke Orders. The guidance cites examples of TPOs where variation or revocation may be required. These include Orders that were made before 1975 (when a significant change to the law was made), old Orders where the tree population may have changed, and Area Orders which protect only those trees standing at the time the Order was made and where it is not possible to judge with certainty which trees are protected.

In pursuance of this advice, TPOs in the city are reviewed from time to time. Out-of-date Orders are varied or revoked as appropriate under powers delegated to Group Manager level.

4.3 The Tilton Line Tree Preservation Order
This Tree Preservation Order was made in 1971, following an application to develop the land by building houses. The Order was an Area Order, which protected all the trees that existed at that time on both the northern and southern embankments of the disused railway line. It would not have protected any trees that were not old enough to have been defined as trees in 1971.

Several years ago it also became evident that the Council’s Legal Services Section no longer held an original copy of the Order. It has, therefore, been unenforceable since that time.

4.4 Land Ownership
The section of the line between Freeman Road North and Ambassador Road, which adjoins Humberstone Park, is in the ownership of the City Council. It was acquired after the service of a purchase notice by the developer following the unsuccessful planning application in 1971. It is managed as a nature reserve.
On the opposite (eastern) side of Ambassador Road, the first part of the site to a depth of approximately 35m is also owned by the City Council. The rest of the land up to Davett Close is in private ownership, it is understood to have been purchased in small plots by the owners of the neighbouring properties.

4.5 The Trees and their Visual Impact

The embankments contain many large trees, both broadleaf and conifer. To the west of Ambassador Road, adjacent to the park, the tree cover is dominated by mature beech with black pine, Scots pine, oak and birch. The northern embankment at this part of the site is most prominent from public places as it overlooks the park.

To the eastern side of Ambassador Road the trees are dominated by dense plantations of Scots pine on the southern embankment and black pine on the northern embankment. Towards Davett Close there are more broadleaf trees, including sycamore, ash, maples and birch. The trees close to Ambassador Road are easily visible from that road, but trees further into the site are less prominent. They are visible through gaps between houses, and over rooftops from higher ground and more distant views.

No survey has been carried out to pinpoint the locations of individual trees. No access can be gained to a substantial part of the site and it would be very difficult to plot and interpret the data with such a mass of trees and other vegetation.

4.6 Objections to the Revocation

Notice of the revocation was sent to the occupiers of every property adjoining the TPO area, as required by the legislation, a total of 143 properties. A site notice was also displayed.

Forty two letters have been received objecting to the revocation, and concerns have been expressed by Councillors Draycott, Thomas and O’Brien. The objections make the following points:

- there was no consultation before the Order was revoked
- the Order was originally made in 1971 following a campaign by local residents
- the land supports over 200 trees including many pine trees, the largest expanse of pine trees in the city
- the land is valuable wildlife habitat, supporting many species of birds and mammals including owls, sparrowhawks, bats and muntjac deer
- the Order has been in force for 32 years – it is inconsistent for it to be revoked now
- the Council stated in 1971 and again in 1980 that the trees were of outstanding amenity value
- the revocation of the Order will enable the land to be developed
- Leicester is an environment city and green lungs should be protected at all costs
- the trees can be seen from the surrounding roads
- Leicestershire was chosen as the site for the National Forest because of its paucity of woodland
- the natural environment of the railway line enhances the lives of those who live nearby
• the developer of the new houses at Holman Row was told the trees must not be touched
• the trees provide personal privacy.

4.7 Assessment
The Order has been revoked. It cannot be reinstated in its previous form, but Members can make a decision whether to make a new Order to protect some or all of the trees, or even add new trees for protection.

There is no consultation with landowners or neighbouring occupiers when TPOs are made. The main reason for this is the obvious one that if people were informed that the Council was minded to protect trees they would be free to save themselves the inconvenience by cutting down the trees before the Order was made. The revocation procedures are very simple and straightforward, and there is no requirement for consultation. Government advice is that local authorities should make full use of their revocation powers. I consider that consulting landowners and the occupiers of neighbouring properties before any TPO was revoked would make the process much more cumbersome and would mitigate against the updating of the Council’s 400 TPOs. In this case it would have meant consulting approximately 150 parties and there are other TPOs of similar size (for instance the Evington Golf Course TPO, which is proposed for partial revocation, covers an area of some 18 hectares).

It appears that, to a large extent, the main fears of those objecting to the revocation of the TPO are that it is a precursor to the development of the railway line by the building of new houses. That is not the case. All the land is allocated in the adopted local plan and the replacement local plan as green space. Building on it would therefore be contrary to the Council’s policies. The revocation has nothing to do with development proposals. It is part of an attempt to keep the Council’s TPOs up-to-date and in good order, an exercise which itself helps to strengthen and reinforce the validity of those TPOs that remain.

New development has recently been permitted in large gardens in the area, and any other such proposals will be decided on their own merits. These developments do not impinge on the area subject to the revoked TPO.

With regard to the comments about habitat value, the land is identified as a Biodiversity Enhancement Site, of local nature conservation value but not of sufficient merit to justify statutory designation. (The part of the line adjoining the park is a local nature reserve.) Its value is derived in part from the trees, but also from the understorey, ground flora, regeneration and woodland structure, all of which could be destroyed without the need for any consent under the TPO. As far as can be ascertained, no survey has ever been carried out to establish the habitat value of the area to the east of Ambassador Road.

With regard to the assertions that the trees are visible from public places, there is some merit in this argument. Those on the Rally Bank are accessible. The other trees cannot be seen from close quarters but can be glimpsed between houses and viewed from more distant vantage points. They have amenity value as a backdrop to the houses on Wicklow Drive and Uppingham Road.
None of the trees has amenity value as an individual specimen. Any value is in their visual effect as an extensive tree-covered area of land. The form and condition of the trees varies widely, from good through poor to dead and dying.

The nature of the site, the constraints of access and the lack of detailed information dictate that if a new TPO is made, it must be either an Area TPO or a woodland TPO. The revoked Order was an Area Order, but government guidance advises against such Orders, except on a temporary basis in emergencies. They protect only the trees standing at the time the Order is made, but tree populations change over time. Woodland Orders protect both the trees currently standing and any that arise as a result of natural regeneration.

It appears to me that there are three separate areas of trees under consideration, to which different criteria apply. These are marked on the attached map.

Land adjoining Humberstone Park (The Rally Bank Nature Area)

Trees to the west of Ambassador Road are owned and controlled by the City Council as part of the Rally Bank Nature Area. If a TPO was made to protect these trees it would prevent the Council carrying out management and maintenance to these trees without first obtaining formal consent under the planning procedures. In my opinion this would be cumbersome, inefficient and unnecessary.

TPOs protect trees by making it an offence to carry out unauthorised works. The implication of this is that if the TPO were breached the Council would have to prosecute itself.

It is most unusual for Councils to make TPOs to protect their own trees. This generally only happens where land is proposed to be sold (such as 332 Narborough Road), or where local management agreements would otherwise give site users rights over trees (such as Braunstone Park and Marriott School) and where it is considered necessary to prevent neighbouring occupiers enforcing their rights to lop overhanging branches (such as Western Park). None of those circumstances apply in this case.

The revocation of the TPO would enable adjoining landowners to cut back branches to their boundaries, but that would not have a significant effect on tree cover.

Council-owned land at Ambassador Road

The land immediately to the east of Ambassador Road, to a depth of some 35m, is also owned by the Council, but is not part of the nature reserve. The same comments about trees on Council owned land equally apply here.

The trees on this site have positive amenity value and can easily be seen from public places.

Any application for planning permission to develop this land would constitute a departure from the development plan, and must be referred to the Secretary of State.
Privately-owned land east of Ambassador Road

The owners of the land on which these trees stand are currently at liberty to fell them if they wish. They do not have any rights to erect buildings, and any built development would be contrary to the policies of the local plan. Even sheds and other garden buildings would require planning permission as the land is outside the curtilages of the adjoining properties. It appears that a number of complainants to the revocation may own, and therefore, control some of the trees on the site themselves.

The landowners are entitled to cut back all undergrowth and shrubs, and may do that whether or not a TPO was in place.

I am not aware of any felling of trees since the revocation.

An important criterion that has not so far been mentioned in this assessment is enforceability. The trees forming a backdrop to the private houses grow close together in no pattern. They cannot be inspected from close quarters. It would, therefore, be practically impossible to enforce tree protection in such circumstances if the owners of any of the trees are intent on felling them or lopping them without regard for the requirements of the law. The burden of proof in the courts is such that the necessary evidence could not be obtained to secure a conviction. Members may wish to make a TPO to cover the privately-owned trees, but if so they must bear in mind that the protection would effectively rely on good will and respect for the law. Indeed, if a TPO was made this may lead to a false expectation among local residents that trees were ‘safe’ when in practice they were not. Furthermore, in the event of a subsequent allegation of unauthorised works to trees, unnecessary officer time would be most likely spent investigating something that would not lead to any further action being possible.

5 Equal Opportunities Implications

None.

6 Policy Implications

None.

7 Legal Implications

None.

8 Sustainability and Environmental Implications
Trees are an important environmental resource and take many years to reach maturity.

9 Crime and Disorder Implications
None.

10 Consultations
None.

11 Background Papers - Local Government Act 1972

Tree Preservation Orders – A Guide to the Law and Good Practice DETR 2000
TPO file N4.014
Adopted City of Leicester Local Plan
Deposited Replacement City of Leicester Local Plan

12 Officer to contact: Paul Champion, Urban Design Group.
Extension: 7263.
e-mail champ002@leicester.gov.uk