

Statement of Case

The following statement is our Opening Statement opposing the imposition of the TPO on this site:

Persimmon Homes Limited's position is as follows:

- Persimmon are of the strong view that the proposed Order is inappropriate and unnecessary and should not be confirmed.
- For the reasons explained in the written submission of 9 November 2020 enclosed with the Appeal Panel report and highlighted in this opening statement, Persimmon consider that it is not *expedient* to make the Order, in the interests of amenity, and therefore the legal test at section 198 of the Town and Country Planning Act 1990 is not met.
- I would like to highlight to members that they need to assess whether there are sufficient amenity grounds to confirm the Order (with regard to the condition and visibility of the trees) and whether it is expedient to confirm the Order (with regard to the risk to such trees).
- In summary Persimmon's position is that:
 - the trees are already under good arboricultural management;
 - there is no threat to the trees on the site which would merit an "emergency" TPO;
 - a number of the trees on the site are not of a condition which warrant TPO protection and in any event the trees have been subject to assessment throughout the planning processes, which have been on-going for over 6 years;
 - the majority of the trees on the site are not visible from public viewpoints and therefore make a limited contribution to amenity; and
 - in any event, the Order in its current form is inappropriate as it covers areas of the site with detailed approval – namely Phases 1 and 2, where permission has been recently granted for the removal of a number of trees.

Turning then to the details of our case:

- I would like to begin by addressing a point raised on page 16 of the Appeal Panel report – that the Order was made following reports to local members about tree

works being carried out on phases of the development, which were not subject to construction work at that time, and because of concerns about tree removal on the site. Persimmon's position on this is:

- Other than on phases where detailed planning permission has been granted and the precise detail of tree removal and retention has been formally approved in planning conditions, any and all works to trees that have been carried out on the site have been carried out following engagement by Persimmon with the District Council.
 - Persimmon anticipate that the works referred to on page 16 of the report are either the clearing of scrubland (including small saplings) to facilitate the accurate surveying of trees, or, works to trees on the boundary of Phase 3 of the development, which were works requested by local residents and Hellesdon Parish Council and which were only carried out following a site visit attended by BDC's Tree Officer, the Case Officer, Local Member and representatives from Hellesdon Parish Council, and subsequent approval being given in writing by BDC.
 - Persimmon have no intention of altering from this established practice of engaging with the District Council before works are done to trees on the development site.
 - Persimmon have engaged an arboriculturist in connection with the development at RNGC (who is available today to take questions) and take their responsibilities towards the trees on the site very seriously.
 - The Government's Planning Practice Guidance (Paragraph: 010 Reference ID: 36-010-20140306) indicates that it is *"unlikely to be necessary to make an Order in respect of trees which are under good arboricultural...management"*. Persimmon consider that the Order is unnecessary given their on-going management of the trees at RNGC.
- Indeed, Persimmon were of the view that it had been agreed with the District Council that Individual, Group or Woodland Tree Preservation Orders would be served for each phase of the development once detailed planning permission had been granted for the respective phase, and tree removal and retention had been formally agreed through the planning process. This approach was confirmed by the Case Officer in an email dated 22 November 2019.

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- As members will know, the Area TPO which is envisaged, only offers protection for trees standing at the time it was made (i.e. October 2020) and would fail to protect any new trees introduced as part of the development of each phase.
- Persimmon would be quite content for TPOs to be imposed on a phase by phase basis as detailed permission is granted to allow for the long-term protection of both existing trees and new trees on each phase of the development.
- In addition, to allay any concerns that members may have, Persimmon would be prepared to give an undertaking that no established trees would be removed from the site as a whole in the area covered by the made Order (excluding areas where detailed permission has been granted and construction work is on-going) without first consulting with the District Council, until detailed permission has been granted for the part of the site in question – at which point tree removal and retention would be governed by the detailed permission for that phase. This would be subject to the exclusions for carrying out works to protected trees in the 2012 regulations, of course.

Turning then to the principle of the development and tree removal

- This site is allocated for the development of 800 – 1,000 homes in the Council's current local plan. This allocation – adopted in May 2016 – accepted the principle of tree removal on the site.
- As detailed in Persimmon's written objection at paragraphs 22 – 28, a number of planning permissions have been granted in respect of the site since 2016 for up to 1,000 dwellings.
- Persimmon's outline planning application was supported by landscape evidence. This evidence highlighted that the value of the golf course landscape is limited to boundary vegetation and ridge line trees – not all of the trees on the site contribute towards this value - reinforcing Persimmon's view that this blanket Area Order is inappropriate and not supported by the evidence.
- Persimmon's planning applications have been supported by Arboricultural Impact Assessments which set out individual and groups of trees to be lost, those to be retained in part and those to be retained in full. These Impact Assessments have been approved and now form the framework for the development of the Site in terms of tree removal.
- Planning conditions on the extant outline planning permission for the development (conditions 13 and 14) require details of existing trees and those trees to be retained

or removed to be submitted and approved by the District Council before the development of any phase or parcel of the development. Persimmon have no intention of unnecessarily carrying out works or removing any trees on parts of the development yet to receive detailed planning permission as Persimmon is conscious of its responsibilities under these conditions and wishes to ensure that we can comply with these conditions at the point a detailed planning application is granted for that phase.

- The principle of tree removal has already been accepted and the existing planning decisions provide for sufficient protection of trees on the site.

Turning then to detailed points in the LPA case

- As set out at paragraph 37 of Persimmon's written representation, members must consider whether an "area" TPO is the correct form of Order here.
- Government guidance sets out that an "area" TPO, such as this Order, is intended for short-term protection in an emergency and may not be capable of providing long-term protection.
- As I have already set out, Persimmon do not consider that there is any such emergency here and are prepared to make further assurances in this regard to allay any fears members have about this.
- The District Council's Tree Officer appears to accept on pages 13 and 17 of the report that some of the trees on the site have defects that could adversely affect their long-term retention and that some of the trees on the site are not worthy of protection. This view is borne out, by for example, their agreement to the felling of the Poplar trees on the northern boundary of Phase 2. Persimmon agree that a number of the trees on the site simply are not appropriate for protection. This view is set out in the AIA approved as part of the Outline Planning Permission, which identifies the areas of lower value trees to be removed. It is therefore not appropriate to protect these trees with an Area TPO.
- Such trees make no contribution to amenity as required by section 198 of the TCPA 1990 and this means that the Order does not satisfy the requirements for a TPO.
- Indeed, the scope of the Order is also already out-of-date and inappropriate. The Order's area covers Phases 1 and 2 of the development where detailed planning permission has already been granted and precise detail of the tree removal and retention has already been agreed and secured. For example, the most significant Oak trees within Phase 2 have been retained within the detailed layout, whilst the

Poplars on the northern boundary will be felled. There is certainly no “emergency” warranting the protection of any trees on Phases 1 and 2 as any protection required is already secured by planning condition on these areas and amenity has already been assessed in detail here. For this reason alone, the Order in its current form does not meet the legal tests and should not be confirmed.

- If the Order was confirmed in its current form it would already be ineffective and out-of-date in respect of Phases 1 and 2 of the development. In addition, Persimmon would have no guarantees as to whether and when the District Council would review the Order to provide protection only to such trees which merit it.
- The site also remains in private ownership and the majority of the trees on the site cannot be viewed from publically accessible vantage points. Private viewpoints are generally limited by boundary vegetation, which would, in the main, be retained, with the exception of the area required to create the main site access off Low Road being cleared and a linear group of Leyland Cypress/Poplar along the industrial estate boundary being removed. This limits the amenity value that the trees within the internal areas of the site provide and Persimmon’s case is that the Area Order that is proposed does not meet the relevant tests, as the majority of the trees that it looks to protect do not contribute towards amenity.
- Persimmon are somewhat surprised that no detailed assessment of the trees on the site has been carried out over the past six months since the Order was made in October 2020 and do not consider that Covid-19 related restrictions should have prevented this, given this is work which would have been done outside. Indeed, even if Covid-19 restrictions did prevent such work then the work to assess the trees on Phases 1 and 2 could have at least been done as a “paper” exercise as the detail of tree removal and retention has already been agreed by the District Council through the granting of detailed planning permission. Indeed Persimmon is further surprised that at no point in allocating this site or considering its development in detail, whether at the Outline Planning Permission or Reserved Matters stages, have the Council carried out a TEMPO assessment of any of the trees. Furthermore the Council still have not looked at Ph 1 following Reserved Matters approval in May 2019 to identify which trees should be protected by TPOs following completion of the development. This action would have ensured the continued protection of the trees within this Phase with the appropriate form of TPO. Therefore we are slightly confused as to why such an ‘emergency’ situation has been cited as the justification for the imposition of this Area TPO.

- Despite the officer's indications on page 12 in the report that the District Council would reclassify the trees if the Order was confirmed, Persimmon have severe concerns as to whether and when this would be done given it appears that no work in this regard has been done in the previous 12 months – which Persimmon would have expected if this was a case of acting urgently in response to a threat to trees that warranted protection.
- Officers indicate at page 13 of the Appeal Panel report that they consider it is better for residents to move to a property with an existing TPO in place rather than serve one once the houses are occupied. Persimmon agree with this in principle but do not consider that the Area Order is the best way to achieve this. Persimmon consider that confirming the Area Order now will actually cause confusion as it will only be effective in respect of trees standing in October 2020 – future residents will be in doubt as to whether the trees on the site were in place on this date or not and therefore unsure as to whether they benefit from protection or not. This will undoubtedly increase enquiries for District Council officers and increase the risk of protected trees being felled inadvertently. Persimmon consider the better approach would be not to confirm the Order but instead confirm individual Orders relating to each phase of the development once the detail of tree retention, removal and new tree planting has been agreed on a phase-by-phase basis, the approach previously agreed with the Council in 2019.

Closing statement

[To include matters raised by the officer and members during the meeting.]

Persimmon urge members not to confirm the Order. As explained in detail earlier and in written submissions, Persimmon's position is as follows:

- the trees on the site are already under good arboricultural management, with effective dialogue occurring with the Council when works are required;
- there is no threat to the trees on the site which would merit an "emergency" TPO of this nature;
- as there is no emergency to justify the TPO the expediency test at section 198 of the Town and Country Planning Act 1990 falls away;
- the majority of the trees on the site are not visible from public viewpoints and therefore make a limited contribution to amenity;
- a number of the trees on the site are not of a condition which warrants TPO protection and in any event the trees have been subject to assessment throughout

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the planning processes, which have been on-going for over 6 years, and will continue to be so; and

- in any event the Order in its current form is inappropriate as it covers areas of the site with detailed approval – namely Phases 1 and 2.
- We have had a positive rapport with the Council to date in discussing and agreeing which trees should be retained and which could be removed in order to deliver an appropriate number of dwellings on this site. As a result of many months of work we have gathered a huge amount of detailed information on the trees on the site to aid these negotiations going forwards.

Instead, Persimmon request that members take a more positive approach and instead look to place TPOs on phases of the development once the detail of tree removal, retention and new tree planting is agreed on those phases, as previously agreed with the Council. This would have the benefit of avoiding the confusion of the Area TPO protecting trees which have already been approved for removal (in respect of Phases 1 and 2) and offering long-term protection to both retained and new trees on the site.