

NORTH WEST LEICESTERSHIRE DISTRICT COUNCIL

PLANNING COMMITTEE - WEDNESDAY, 1 OCTOBER 2019

Title of report	TO CONSIDER THE MAKING OF A TREE PRESERVATION ORDER (TPO) AT 86 LEICESTER ROAD WHITWICK
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Purpose of report	To consider the objections from Mr. M. Anderson who is the site owner and representations lodged by his neighbour Mr. M. Molyneux.
Reason for decision	<p>A provisional TPO was made on 25th April 2019 and a revised provisional TPO was made on 14th May 2019.</p> <p>The TPO needs to be confirmed within six months. Trees will lose their protection if not confirmed within six months.</p>
Council Priorities	Developing a Green and Clean District
Implications	<p>Not applicable</p> <p>None</p> <p>None</p> <p>Equality Impact Assessment already undertaken, issues identified actioned.</p> <p>Under the Human Rights Act, Article 8, there is a right to respect for private and family life, the home and correspondence. The making of a Tree Preservation Order potentially impacts on that right. However, in this case it is considered that the making of the Order is justified in the public interest.</p> <p>None</p>
Financial/Staff	
Link to relevant CAT	
Risk management	
Equalities Impact Screening	
Human Rights	
Transformational Government	None

Consultees	People with a legal interest in the land affected by the Order have been consulted and members of the public were consulted by the placing of site notices.
Background papers	None
Recommendations	<p>(i) THAT THE TREE PRESERVATION ORDER (TPO) T477 BE CONFIRMED</p> <p>(ii) THAT THE TREE PRESERVATION ORDER (TPO) T476 IS NOT CONFIRMED</p>

1.0 INTRODUCTION AND BACKGROUND

- 1.1 When tree work commenced on the west boundary of 86 Leicester Road, a request was received from neighbours to make a TPO to prevent further felling. An emergency Tree Preservation Order T476 was prepared and served, and came into force for a six month period on 25 April 2019. The Council's Tree Officer subsequently inspected the site and found that trees to the rear of the house and on the west boundary did not merit protection by TPO.
- 1.2 A revised provisional TPO T477 was made on 14 May to protect only those trees along the front boundary of Leicester Road with the intention of not confirming TPO T476.
- 1.3 TPO T477 protects T1 copper beech, T2 ash, T3 sycamore and G1 3no. yews and 2no. holly.
- 1.4 Because the owner has made an objection to both Orders and a representation has been received challenging T477 for the reason that it does not protect all trees on the property, Planning Committee is asked to formally confirm the making of Tree Preservation Order T477.
- 1.5 The effect of this would be to maintain Order T477 on a permanent basis.

2.0 OBJECTIONS AND OFFICER COMMENTS

2.1 Objections from Mr Anderson

- 2.1.1 Mr Anderson objected to TPO T476 because it lacked detail in respect of tree numbers and species. His accompanying Apex Environmental arboricultural report considers that copper beech (T1) and sycamore (T3) to the front of the house are causing damage to the property and footpath and are likely to cause indirect and direct damage to the property if they are retained.
- 2.1.2 Other trees along the front boundary (T2 and G1) are said to be damaging the boundary wall and are in contact with telephone cables. Other objections are that branches are close to the chimney stack, the owner has been working within the law clearing self-set trees from the neglected garden and the tone of visit accompanied by police had led to stress.
- 2.1.3 He considers there should be a 3m. clearance between tree branches and a chimney pot.

- 2.1.4 The second Apex report which forms the objection to TPO T477 makes the same points but also considers that errors were made in making the TPO. General observations are made on building condition and tree zones of influence. The report identifies path damage caused by the beech and notes that branches are in contact with the chimney stack and roof of the house. It explains the TEMPO (Tree Evaluation Method for Preservation Orders) method and provides an amenity assessment which actually confirms the Tree Officer's own TEMPO assessment that the frontage trees do merit protection by TPO.
- 2.1.5 The Apex report identified honey fungus colonisation in the partially lopped horse chestnut on the west boundary and also considers that trees in the rear garden have no public amenity value.
- 2.1.6 The report refers to NHBC (National House Building Council) recommendations for foundation depth when building near trees and suggests that trees should be no closer to buildings than in NHBC guidance.

2.2 Representations from Mr Molyneux

- 2.2.1 Mr Molyneux refers to the site as Ancient Woodland and would like to see all trees on the property protected by TPO. He has provided an 1884 OS map which has trees marked on it.
- 2.2.2 He is concerned that protection should be given to wildlife, history, visual amenity and the benefits of noise reduction.

2.3 Tree Officer Comments

- 2.3.1 Trees to the rear of the property are in poor structural condition. They consist of three medium size sycamores with extensive decay and fungal infection and three suppressed sycamores of poor form. Where there is a likelihood of structural failure the Local Planning Authority cannot justify making a TPO.
- 2.3.2 One horse chestnut was partially felled by tree surgeons before work was suspended and consequently is badly disfigured. It has been colonised by honey fungus which can cause root decay resulting in failure.
- 2.3.3 Small fruit trees in the rear garden have no public visibility and one Lombardy poplar has extensive trunk decay due to previous lopping.
- 2.3.4 Additionally, to the front of the property some young naturally regenerated trees do not merit TPO protection and therefore only three prominent yews and two hollies in G1 are considered worthy of protection. It would be reasonable for larger growing species in G1 which could damage the boundary wall, to be removed. Pruning could provide suitable clearance for overhead wires.
- 2.3.5 T1 copper beech, T2 common ash and T3 sycamore are large, very prominent trees and their removal would have a significant negative impact on the local environment and its enjoyment by the public. TPO protection will provide significant public benefit.
- 2.3.6 T1 copper beech is a mature tree located 2m. from the house, is of asymmetric form and the canopy grows predominantly away from the house. Branches over the roof will need to be trimmed if the roof and chimney pot are to be cleared but this could have minimal impact on tree shape or condition if undertaken sympathetically. The tree's unusual and valuable characteristics could be retained.

- 2.3.7 T3 sycamore is 1.5m. from the brick barn which has structural cracks. In conjunction with T2 ash the pair of trees help soften the built environment and are important elements of the Leicester Road landscape.
- 2.3.8 No Structural Engineer's report has been provided and the impact that trees are having on the building has not been professionally determined. Engineering solutions could possibly be sought to enable tree retention if they are having a material impact on the buildings.
- 2.3.9 NHBC Chapter 4.2 document is not a document to be used for assessing subsidence risk of existing buildings. It is a guide to the foundation depth required for new buildings near existing trees.
- 2.3.10 The Council's Building Control and Land Charges Team Leader has confirmed that there are no specific building regulations in respect of trees and chimneys. It is considered that some pruning would be acceptable to provide effective clearance from the chimney pot. Anti-downdraught terminals can be fitted to provide weather, bird and debris protection to the chimney.
- 2.3.11 It must be noted that if the trees are implicated in a subsidence event caused by the direct or indirect action of tree roots and an application to fell is subsequently refused by the Local Planning Authority, the Council could be liable for the costs of repair. If a property is insured, such costs are usually outlined by an insurance company or loss adjuster when an application is made to remove protected trees and such costs should be compared with a CAVAT valuation (Capital Asset Value for Amenity Trees) to assess financial benefits and implications.
- 2.3.12 The 1884 map provided does not denote Ancient Woodland. Ancient Woodland by definition must have been present in 1600AD and Natural England records indicate this is not Ancient Woodland.
- 2.3.13 Trees in the rear garden do provide a softening backdrop but the Council cannot justify making a TPO in respect of trees with a limited safe life expectancy and which are likely to fail in the near future.
- 2.3.14 The Council's Principal Solicitor is of the view that the TPO is capable of being confirmed. A simple clerical error can be corrected by way of manuscript amendment in a confirmed order.
- 2.3.15 It is therefore considered that the proposed Tree Preservation Order T477, as per the map at appendix 1 of this report meets the legal requirement for making a TPO, and that the reasoning that was set out in the objection to the TPO does not indicate that the TPO should not be confirmed. It is, accordingly, recommended that the TPO T477 be confirmed with immediate effect to provide TPO protection to T1 copper beech, T2 ash, T3 sycamore and G1 3no.yew and 2no.holly.
- 2.3.16 TPO T476 should not be confirmed.
- 2.3.17 Members will note that full copies of correspondence received are available on the planning file.