

Report of:	Meeting	Date	Item No.
Mark Billington Corporate Director Environment	Planning Committee	7 October 2020	7

<b>Wyre Council Tree Preservation Order No8 of 2020: Land to the south of the River Wyre and to the west of Wyre Bridge, Station Lane, Scorton.</b>
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## 1. Purpose of report

- 1.1 To consider the objection to the making of Wyre Council Tree Preservation Order No8 of 2020: Land to the south of the River Wyre and to the west of Wyre Bridge, Station Lane, Scorton.

## 2. Outcomes

- 2.1 To determine whether or not to confirm the Wyre Council Tree Preservation Order No8 of 2020: Land to the south of the River Wyre and to the west of Wyre Bridge, Station Lane, Scorton.

An effective tree preservation order makes it an offence to do any works to the protected trees without first gaining consent from the Local Planning Authority unless such works are covered by an exemption within the Town and Country Planning (Tree Preservation) (England) Regulations 2012.

## 3. Recommendation

- 3.1 That the Wyre Council Tree Preservation Order No8 of 2020: Land to the south of the River Wyre and to the west of Wyre Bridge, Station Lane, Scorton (“the TPO”) is confirmed subject to modification of the TPO schedule to contain the following additional text within the description ‘1 poor condition beech tree centred on (E) 349511 (N) 449350 within the southern section of G1 does not merit TPO so has not been included.

## 4. Legislative background to the TPO

- 4.1 Section 198 of The Town and Country Planning Act 1990 (as amended) empowers Local Planning Authorities to protect trees or woodlands in their area in the interest of amenity by making tree preservation orders. Following the introduction of **The Town and Country Planning (Tree Preservation) (England) Regulations 2012**, The Local Planning Authority

is required to confirm a tree preservation order within six months of the issue date if it is to continue to have effect after that period. When an objection is received, a decision on confirmation is usually referred to the Planning Committee.

- 4.2** Tree preservation orders are usually made because it is considered expedient in the interests of amenity to protect the trees from felling or pruning. Authorities can also consider other sources of risks to trees with significant amenity value. For example, changes in property ownership and intentions to fell trees are not always known in advance, so it may sometimes be appropriate to proactively make an order as a precaution.
- 4.3** Amenity is not defined in law but the government's advice is that authorities need to exercise judgement when deciding whether it is within their powers to make an Order. Orders should be used to protect selected trees and woodlands if their removal would have a significant negative impact on the local environment and its enjoyment by the public. Before authorities make or confirm an Order they should be able to show that protection would bring a reasonable degree of public benefit in the present or future (GOV.UK, 2014).

Therefore the following criteria should be taken into account when assessing the amenity value of trees:

- **Visibility:** *the extent to which the trees or woodlands can be seen by the general public will inform the LPA's assessment of whether its impact on the local environment is significant. The trees, or at least part of them, should normally be visible from a public place, such as a road or footpath, or accessible by the public.*
- **Individual, collective and wider impact:** *public visibility alone will not be sufficient to warrant an Order. The authority is advised to also assess the particular importance of an individual tree, of groups of trees or of woodlands by reference to it of their characteristics including:*
  - *Size and form;*
  - *Future potential as amenity;*
  - *Rarity or historic value;*
  - *Contribution to, and relationship with, the landscape; and*
  - *Contribution to the character or appearance of a conservation area.*
- **Other factors:** *where relevant to an assessment of the amenity value of trees or woodlands, authorities may consider taking into account other factors, such as importance to nature conservation or response to climate change.*

*(Source: Tree Preservation Orders and trees in Conservation Areas/Planning Practice Guidance March 2014).*

- 4.4** The Regulation 5 notice, which is a legal notice that is served with the tree preservation order documents on the owner and occupier of the land affected by a tree preservation order and also the owner and occupier of the adjoining land, states the reason why the trees have been protected and invites objections or representations to be made to the Local Planning Authority within a 28-day period. The Regulation 5 Notice issued in respect of the land affected by the TPO gave the reason for making the TPO as *“it is expedient in the interest of amenity”*.
- 4.5** Once made, a tree preservation order takes effect provisionally for six months, but must be confirmed by the Local Planning Authority within that period to continue to be effective. If it is not confirmed the tree preservation order ceases to have effect and the trees are unprotected. When objections or representations are received the Council must consider those before any decision is made whether or not to confirm the order. In these cases, referral to Planning Committee is usually appropriate.

## **5. Background to making the TPO**

- 5.1** On 31 July the tree officer became aware of a Network Rail enquiry relating to a desire to undertake the felling of trees on private land adjacent to the west coast main line railway (“WCML”) at Station Lane, Scorton.

On 4 August 2020 the Tree Officer visited this land and undertook an appropriate tree evaluation method for preservation orders (“TEMPO”) which guided the subsequent decision to make a tree preservation order. The TPO applies to a group of trees identified as G1. Please note that those trees that did not merit protection due to poor condition and a limited remaining life span have not been included within the TPO.

A copy of the completed 4 August 2020 TEMPO survey data sheet relating to G1 of the TPO along with an associated public visibility image of G1 are appended to this report at Appendix 1.

On 7 August 2020 Wyre Council made Wyre Council Tree Preservation Order No8 of 2020: Land to the south of the River Wyre and to the west of Wyre Bridge, Station Lane, Scorton.

A copy of the TPO plan is appended to this report at Appendix 2.

- 5.2** The Council served correspondence on the owners and occupiers of the land affected by the TPO and on those adjoining, notifying them of the making of the TPO in accordance with Regulation 5 of the Town and Country Planning (Tree Preservation) (England) Regulations 2012.

The period for any objections and representations to be made to the Council in respect of the TPO ended on 4 September 2020.

**5.3** Wyre Council received a formal objection letter from Network Rail dated 2 September 2020 via e-mail dated 3 September.

A copy of the letter of objection is appended to this report at Appendix 3.

## **6. Summary of Objections**

- 6.1**
- (i) The Council has not robustly justified or provided evidence to support the TPO.
  - (ii) The 'group' designation is not appropriate to describe the trees. There are 4 oak, 2 sycamore, 2 beech and 2 pine within the broken line on the TPO map. Government guidance advises that the location of each tree should be indicated within the broken line on the map.
  - (iii) An 'area' category would have been more appropriate.
  - (iv) Whilst the trees at Station Lane may merit protection on amenity grounds, it is clearly not expedient because there is no risk to the trees.
  - (v) The serving of a TPO by the Council on these trees will complicate matters and most likely lead to delays in undertaking any works necessary to maintain the safe and punctual operation of the WCML.
  - (vi) Network Rail is a 'statutory undertaker' and consent is not required for the carrying out of works to protected trees in compliance with any obligation imposed by or under an Act of Parliament. Therefore, any works to the trees at Station Lane in order to maintain the safe and punctual operation of the WCML would possibly be exempt from the normal requirement to apply for consent under the terms of the TPO.

## **7. Response to Objections**

**The Tree Officer's response to the objections are as follows:**

- 7.1**
- (i) The Tree Officer exercised judgement having regard to government guidance when deciding to make the TPO. An onsite Tree Evaluation Method for Tree Preservation Orders was undertaken on 4 August 2020, (TEMPO) in respect of all the trees

on the site. The TEMPO comprised an amenity assessment in relation to the condition and suitability of G1 trees along with consideration of tree species life expectancy, public visibility, other factors and expediency. It was concluded that the TPO should be made because 'it is expedient in the interest of amenity'. The public visibility image in Appendix 1 clearly shows the contribution of the trees in G1.

(ii) According to government guidance, the group category should be used to protect groups of trees where the individual category would not be appropriate and the group's overall impact and quality merits protection. Officer judgement is that this is the appropriate category in this case and that the 'group' designation describes the trees at this location which merit including within the TPO. G1 is clearly defined in the TPO by the black line on the TPO map. It is clear that the trees that lie within the black line are protected by the Group designation.

The northern portion of broken line on the map follows the top of the river bank. The 2 'not worthy' pines are located down the slope within the green area due north of the northern portion of broken black line and thus outside of G1.

1 poor condition beech tree centred on (E) 349511 (N) 449350 within the southern section of G1 does not merit TPO so has not been included whereas the fair condition beech tree in the western section of G1 is included. Hence the reason that the schedule specification of G1 only includes 1 beech.

- (iii) Government guidance states that the "area category is intended for short-term protection in an emergency and may not be capable of providing appropriate long-term protection. The Order will protect only those trees standing at the time it was made, so it may over time become difficult to be certain which trees are protected. Authorities are advised to only use this category as a temporary measure until they can fully assess and reclassify the trees in the area." The use of an 'area' category was not deployed as the Tree Officer has fully assessed the trees and deemed the group category suitable due to the cohesiveness of the trees therein. Additionally, no perceived or immediate threat was identified in relation to the trees which is usually the case when an intended short term area category is triggered.
- (iv) It is considered that as clearly shown in the TEMPO undertaken clearly shows that G1 merits protection. In consideration of 'Expediency' the circumstances dictated that an assessment score of one 'Precautionary only' be attributed.

For completeness, the TEMPO in Appendix 1 undertaken in relation to G1 trees show the amenity and expediency assessments for those aspects of the TPO.

- (v) The legislation strikes a balance between the private and public interests. The legislative procedures are proportionate and the Regulations contain various exemptions.
- (vi) Regulation 13 provides for certain exceptions from control, including for where a tree is on operational land of a statutory undertaker. The private land on which the trees of G1 are located is not classed as operational land of Network Rail a 'statutory undertaker' and therefore not covered by this exception. Regulation 13 also provides an exemption in connection with compliance with any obligation imposed by or under an Act of Parliament or so far as may be necessary for the prevention or abatement of a nuisance. The objection is generic and it has not been demonstrated that this exemption would apply in principle in the circumstances of this case. Even if the exemption were potentially to be applicable, it would not be a reason to not confirm the TPO. The legislation does not prevent the confirmation of a tree preservation order where there is a relevant Act of Parliament but instead balances interests by protecting the position of statutory undertaker to the extent of the works it exempts in the appropriate circumstances.

Advice pertaining to Planning Committee and its procedures along with a copy of this report relating to the TPO have been forwarded to Network Rail in reasonable advance of the meeting of Planning Committee on 7 October 2020.

### **Concluding remarks**

It is considered that the TPO has been properly made in the interests of securing the contribution and benefit of the trees to which the TPO applies to the public amenity in the area. The TPO protects important element of the local landscape and contributes to the local environment. All the trees presently protected by the TPO were assessed in a structured and consistent way using an approved method.

It is considered that the procedural requirements of the legislation have been followed in the creation of the TPO and determinations made using a widely accepted method which includes an expediency assessment as has occurred in this case. Having regard to the legislation and the Government Guidance, it is considered that the TPO is fully justified in all respects and should be confirmed subject to the modification of the TPO schedule to contain the following additional text within the description '1 poor condition beech tree centred on (E) 349511 (N) 449350 within the southern section of G1 does not contribute to the collective overall impact and quality of the group so has not been included'.

<b>Financial and Legal Implications</b>	
Finance	None.
Legal	Before confirming a Tree Preservation Order, the Local Planning Authority must consider any objections/representations made within the 28-day objection period. If, having considered any objections/representations received, the Local Planning Authority is satisfied that the tree merits a TPO; it may confirm the Order under the Town and Country Planning Act 1990 and supporting Regulations. The LPA may also confirm an Order in modified form, revoke it, or allow it to lapse. However it cannot add to the Schedule references to a tree to which the Order did not previously apply. There is no right of appeal to the Secretary of State, but a challenge may be made to the High Court on a point of law.

#### **Other risks/implications: checklist**

If there are significant implications arising from this report on any issues marked with a ✓ below, the report author will have consulted with the appropriate specialist officers on those implications and addressed them in the body of the report. There are no significant implications arising directly from this report, for those issues marked with an x.

<b>implications</b>	<b>✓ / x</b>
community safety	x
equality and diversity	x
<b>sustainability</b>	✓
health and safety	x

<b>risks/implications</b>	<b>✓ / x</b>
asset management	x
<b>climate change</b>	✓
data protection	x

<b>report author</b>	<b>telephone no.</b>	<b>email</b>	<b>date</b>
Ryan Arrell BSc (Hons), HND, LANTRA qualified professional tree inspector.	01253 887614	Ryan.Arrell@wyre.gov.uk	29 October 2020

<b>List of background papers:</b>		
<b>name of document</b>	<b>date</b>	<b>where available for inspection</b>
Wyre Council TPO 8 of 2020	29 09 2020	Room 134 or by email to Tree Officer.

### **List of Appendices**

#### **Appendices:**

- 1** – 4 August 2020 completed TEMPO G1 survey data sheet and also public visibility Image of G1.
- 2** – Wyre Council Tree Preservation Order TPO map.
- 3** – Copy of letter of objection from Network Rail made on 2 September 2020 received via e-mail on 3 September 2020.

### **References List**

*Tree Preservation Orders and trees in Conservation Areas.* GOV.UK, (2014) Accessed Via <https://www.gov.uk/guidance/tree-preservation-orders-and-trees-in-conservation-areas>

(TEMPO) Tree Evaluation Method for Preservation Orders  
<http://www.flac.uk.com/wp-content/uploads/2014/12/TEMPO-GN.pdf>

Town and Country Planning (Tree Preservation) (England) Regulations 2012.

# Appendix 1

## TREE EVALUATION METHOD FOR PRESERVATION ORDERS - TEMPO

### SURVEY DATA SHEET & DECISION GUIDE

Date: 4 August 2022 Surveyor: R. Arrell

Tree details  
 TPO Ref (if applicable): Tree/Group No: 1 Species: oak x 4, SYC x 2  
 Owner (if known): Location: Station Lane, Scorton, Beech x 1

REFER TO GUIDANCE NOTE FOR ALL DEFINITIONS

#### Part 1: Aridity assessment

##### a) Condition & suitability for TPO

- 5) Good Highly suitable
- 3) Fair/satisfactory Suitable
- 1) Poor Unlikely to be suitable
- 0) Dead/dying/dangerous\* Unsuitable

##### Score & Notes

3, (Poor beech in southern section excluded)

\* Relates to existing context and is intended to apply to severe irremediable defects only

##### b) Retention span (in years) & suitability for TPO

- 5) 100+ Highly suitable
- 4) 40-100 Very suitable
- 3) 20-40 Suitable
- 1) 10-20 Just suitable
- 0) <10\* Unsuitable

##### Score & Notes

2

\* Includes trees which are an existing or near future nuisance, including those clearly outgrowing their context, or which are significantly negating the potential of other trees of better quality

##### c) Relative public visibility & suitability for TPO

Consider realistic potential for future visibility with changed land use

- 5) Very large trees with some visibility, or prominent large trees Highly suitable
- 4) Large trees, or medium trees clearly visible to the public Suitable
- 3) Medium trees, or large trees with limited view only Suitable
- 2) Young, small, or medium/large trees visible only with difficulty Barely suitable
- 1) Trees not visible to the public, regardless of size Probably unsuitable

##### Score & Notes

4

##### d) Other factors

Trees must have accrued 7 or more points (with no zero score) to qualify

- 5) Principal components of formal arboricultural features, or veteran trees
- 4) Tree groups, or principal members of groups important for their cohesion
- 3) Trees with identifiable historic, commemorative or habitat importance
- 2) Trees of particularly good form, especially if rare or unusual
- 1) Trees with none of the above additional redeeming features (inc. those of indifferent form)
- 1) Trees with poor form or which are generally unsuitable for their location

##### Score & Notes

4

#### Part 2: Emergency assessment

Trees must have accrued 10 or more points to qualify

- 5) Immediate threat to tree inc. s.211 Notice
- 3) Foreseeable threat to tree
- 2) Perceived threat to tree
- 1) Precautionary only

##### Score & Notes

1

#### Part 3: Decision guide

- Any 0 Do not apply TPO
- 1-6 TPO indefensible
- 7-11 Does not merit TPO
- 12-25 TPO defensible
- 26+ Definitely merits TPO

##### Add Scores for Total:

14

##### Decision:

MAKE TPO.

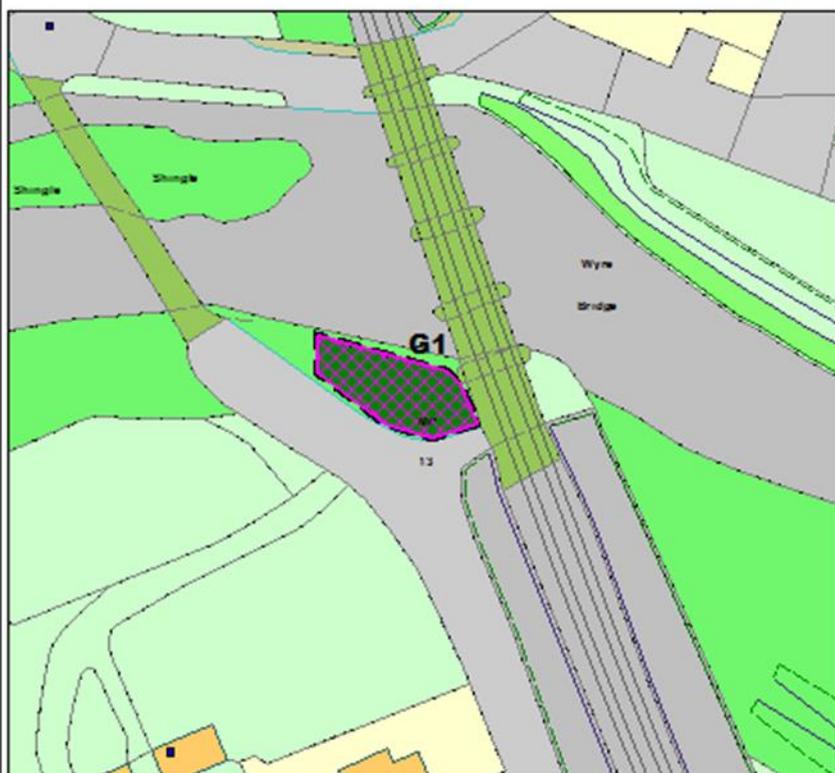


## Appendix 2

### Wyre Council Tree Preservation Order No8 of 2020



Land to the south of the River Wyre and to the west of Wyre Bridge, Station Lane, Scaerton, PR3 1AN



Scale: 1:1000

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Organisation	Wyre Council
Department	Planning Department
Comments	Not Set
Date	06/08/2020
MSA Number	100018720

## Appendix 3

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### Network Rail

North Union House  
Christian Road  
Preston

### PR1 8NB

2 September 2020

To whom it may concern,

### **Formal Objection to the Wyre Borough Council (Land to the south of the River Wyre and to the west of Wyre Bridge, Station Lane, Scorton, PR3 1AN) Tree Preservation Order No 8 2020:**

Network Rail own and manage land (the West Coast Main Line) immediately to the east of land to the south of the River Wyre and to the west of Wyre Bridge, Station Lane, Scorton, PR3 1AN. On August 7, 2020 we received notice of the above Tree Preservation Order (TPO) which relates to the land to the south of the River Wyre and to the west of Wyre Bridge.

This letter confirms our formal **objection** to the above TPO. This objection is made on the basis that the Council has not robustly justified or provided evidence to support the TPO and that the 'group' designation is not appropriate to describe the trees at this location.

**Background:** The West Coast Main Line (WCML) carries a mixture of intercity rail, regional rail, commuter rail and rail freight traffic on a daily basis and is recognised as one of the most heavily used mixed-traffic railway routes in Europe. It is one of the busiest freight routes in Europe, carrying 40% of all United Kingdom rail freight traffic. The line is the primary rail freight corridor linking the Europe (via the Channel Tunnel) through London and South East England to the West Midlands, North West and Scotland. The line has also been acknowledged as a strategic European route and designated a priority Trans-European Networks route. Much of the line has a maximum speed of 125 mph that is utilised by the tilting Class 390 Pendolino and Class 221 Super Voyager electric and diesel multiple units. All other traffic including high-speed freight operations is limited to 110 mph.

With the above in mind, Network Rail arboriculturists have recently carried out a survey of the WCML between Preston and Lancaster to identify trees that due to their size and

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positioning pose a hazard to the safe and punctual operation of the railway. The trees at land to the south of the River Wyre and to the west of Wyre Bridge, Station Lane fall into this category. In the event of a partial failure the trackside trees are capable of striking the overhead line equipment (causing a dewirement) as well as hitting the track itself and causing a derailment in the event of a major failure.

As such and mindful of the proximity of the trees to the railway, Network Rail would propose to alleviate the risk to the railway, travelling public and liability to the landowner via a combination of pruning and felling works to trees within striking distance of our key infrastructure.

In an effort to ascertain the identity of the landowner at Station Lane, contact was made with officers at Wyre Borough Council (WBC) via an initial query Lancashire County Council (LCC). On July 31, 2020 we received a reply by email from Ryan Arrell, Tree & Woodland Officer and Wyre Council confirming that the trees at Station Lane were not within Wyre Council's ownership or maintenance responsibility and that the Council were not aware of who owns the land. Seven days later on August 7, 2020 we received notice that a TPO has been made on seven of the trees that stand on the land at Station Lane.

**Grounds for objection:** Network Rail is seeking to work proactively with its lineside neighbours and the relevant authorities by seeking out sites with problematic trees and then negotiating a solution that is equitable to all parties. In this instance our polite inquiries with regard to ownership of the land have led to the imposition of a Temporary TPO. Whilst the trees at Station Lane may merit protection on amenity grounds, it is clearly not expedient because there is no risk to the trees. Network Rail is looking to build a collaborative relationship with local authority tree officers to enable an effective and proactive way of working without the need for unnecessary bureaucracy.

The serving of a TPO by the Council on these trees will complicate matters and most likely lead to delays in undertaking any works necessary to maintain the safe and punctual operation of the WCML.

Network Rail involves local authorities in the planning of significant lineside tree works, a fact clearly illustrated by our initial communication with officers at (WBC) via a contact at (LCC).

The matter is further complicated by the use of the 'group' category to describe the trees. Group 1 in the schedule of the Order describes the trees as on the TPO map. However, there are actually 4 oak, 2 sycamore, 2 beech and 2 pine within the broken line on the TPO map. This description is inaccurate and will lead to confusion, particularly if trees within the group are subsequently removed. It should be noted that government guidance advises that it would be better if the location of each tree can be indicated within the broken line on the map.

In this instance, the use of an 'area' category would have been more appropriate. The area category is intended for short-term protection in an emergency and local authorities are advised to use this category as a temporary measure until they can fully assess and reclassify the trees in the area. This would have allowed discussions to have taken place and, if deemed appropriate, another more accurate TPO with an individual and/or group designation to be made on the trees that would remain after any necessary tree work.

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It should be noted that Network Rail is a 'statutory undertaker' and consent is not required for the carrying out of works to protected trees in compliance with any obligation imposed by or under an Act of Parliament. Therefore, any works to the trees at Station Lane in order to maintain the safe and punctual operation of the WCML would possibly be exempt from the normal requirement to apply for consent under the terms of the TPO.

**Consideration of the objection:** The Government encourages local authorities to meet parties that object to the imposition of a TPO and we would be pleased to attend a meeting to clarify the issues at stake for maintain and operating our public transport network in greater detail. We also note that the procedure by which local authorities must consider objections and decide that an order is confirmed or not is open to criticism because it is the same authority that made it in the first place.

Ideally therefore, any objections should be considered by person/s who were not involved in making the order, such as a committee of elected members. This ensures that an authority is seen to have in place a meticulously fair procedure to deal with objections to a TPO.

If you require any further clarification of the points raised in this objection, please contact me.

Yours sincerely

 **HND Arb F Arbor A**

Network Rail Arboriculturist || Works Delivery || Off Track North Union House || Christian Road || Preston || PR1 8NB || Tel: 07701 062083

**Attached below for reference is the plan and schedule for the TPO** OFFICIAL