

Report of:	Meeting	Date	Item No.
Mark Billington Corporate Director Environment	Planning Committee	06 January 2021	4

<p><b>Wyre Council Tree Preservation Order No10 of 2020: land at 8 Rivers View Fold, Lower Dolphinhholme, LA2 9SH</b></p>
---

## 1. Purpose of report

- 1.1 To consider the objection to the making of Wyre Council Tree Preservation Order No10 of 2020: land at 8 Rivers View Fold, Lower Dolphinhholme, LA2 9SH.

## 2. Outcomes

- 2.1 To determine whether or not to confirm the Wyre Council Tree Preservation Order No10 of 2020: land at 8 Rivers View Fold, Lower Dolphinhholme, LA2 9SH.

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 No10 of 2020: land at 8 Rivers View Fold, Lower Dolphinhholme, LA2 9SH ("the TPO") is confirmed.

## 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 27 July 2020 the tree officer received Conservation Area Notification of intention to fell one oak tree on land at 8 Rivers View Fold, Lower Dolphinholme, LA2 9SH, the reasons provided being that the oak tree leans towards Rose Cottage (No13 Lower Dolphinholme) and blocks light.

On 8 September 2020 the tree officer visited land at 8 Rivers View Fold and undertook an appropriate tree evaluation method for preservation orders (“TEMPO”) which guided the subsequent decision to make a TPO. The TPO applies to 2 Nos oak trees identified as T1 and T2.

A copy of the completed 08 September 2020 TEMPO survey data sheet relating to T1 and T2 of the TPO along with an associated public visibility image of T1 and T2 are appended to this report at Appendix 1.

On 16 September 2020 Wyre Council made Wyre Council Tree Preservation Order No10 of 2020: land at 8 Rivers View Fold, Lower Dolphinholme, LA2 9SH.

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 14 October 2020.

- 5.3** On 21 September 2020 a tree work application was received requesting for consent to reduce T1 oak tree by 1.5 – 2 m and to crown lift. The tree officer gave consent on 6 October 2020 to carry out an overall crown reduction by no greater than 2 metres from branch tips to advantageous growing points and also to remove any rubbing or crossing branches which

are causing damage to branch tissue / structure. Moreover consent was also given to raise the crown by a moderate degree.

- 5.4** Wyre Council received a formal objection letter dated 1<sup>st</sup> October 2020 in regard to the TPO.

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

## **6. Summary of Objections**

The objection puts forward that in all circumstances it is not expedient in the interest of Lower Dolphinholme to create the order and that the order does not comply with the expressed view of the Secretary of State for the following reasons:

- 6.1**
- (i) The tree is hidden behind houses, tucked in a corner and not visible to the public at large.
  - (ii) The removal of the tree will have no impact on the aesthetics and overall attraction of the village, its environment and the enjoyment of the public.
  - (iii) The value of the tree is not enhanced by intrinsic beauty or scarcity. The oak has negligible or no wildlife habitat value. Having been planted too close to the neighbouring oak the spread, appearance and health of both trees will decline as they mature.
  - (iv) The tree is dangerous and is likely to cause property damage now or in the future. The tree is within 3 metres of a joint sewer and no more than 6 meters from the foundations of Rose Cottage.
  - (v) The crown of the tree causes substantial trespass, continued growth and climate change will exacerbate problems.

## **7. Response to Objections**

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

- 7.1**
- (i) & (ii) 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 (TEMPO) was undertaken on 8 September 2020 in respect of T1 and T2.

The TEMPO comprised an amenity assessment in relation to the condition and suitability of 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 T1 and T2 oak trees.

- (iii) Oak trees are a Keystone species and important for biodiversity. Whilst it is accepted that T1 and T2 are competing for dominance neither tree is displaying signs of poor structure or compromised physiology. Future interactions of T1 or T2 due to their close physical association will not be to the detriment of either tree. One tree may take on a dominant canopy form over the other without impacting on overall tree health.
- (iv) The legislation provides for obtaining consents and applies exemptions in certain cases should they be appropriate in future circumstances.
- There are no physical cues to indicate that either T1 or T2 are in a dangerous condition. Currently there is no evidence of property damage associated with T1 or T2 nor likely that either tree will become a future nuisance in regard to defined physical structures.
- (v) Consent was given on 6 October 2020 to carry out tree works to T1, if implemented this will provide a reasonable degree of alleviation of encroachment from property. Moreover, future systematic tree management, carried out under TPO tree work consent or exception, will abate further encroachment and reduce any future risk of hazard associated with tree ill-health, structural defect or the impact of increasing frequency of climate related weather phenomenon.

The objection also puts forward that the Association of British Insurers recommends 30 m width distance as a safe distance from property that oak trees should be planted to prevent damage to property from subsidence. However, this information should not be relied upon in this case as there is no evidence of subsidence, physical damage nor an actionable nuisance.

For completeness, the TEMPO in Appendix 1 undertaken in relation to T1 and T2 show the amenity and expediency assessments for those aspects of the TPO.

Advice pertaining to Planning Committee and its procedures along with a copy of this report relating to the TPO have been forwarded to the objector

in reasonable advance of the meeting of Planning Committee on 06 January 2021.

### **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.

<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.

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

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

report author	telephone no.	email	date
Ryan Arrell BSc (Hons), HND, LANTRA qualified professional tree inspector.	01253 887614	Ryan.Arrell@wyre.gov.uk	18 December 2020

List of background papers:		
name of document	date	where available for inspection
Wyre Council TPO 10 of 2020	16 September 2020	Room 134 or by email to Tree Officer.

## **List of Appendices**

### **Appendices:**

**1** – 8 September 2020 completed TEMPO T1 and T2 survey data sheet and also public visibility Image of T1 and T2.

**2** – Wyre Council Tree Preservation Order No10 of 2020: land at 8 Rivers View Fold, Lower Dolphinholme, LA2 9SH map.

**3** – Copy of letter of objection dated 1<sup>st</sup> October 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: 8/9/20 Surveyor: E. Arrell

Tree details  
TPO Ref (if applicable):  
Owner (if known):  
Tree/Group No:  
Location: open, grassed area between road and riverbank at 8 Rivers View Fold, Lower Dolphinholme  
Species: oak (T1 & T2)

REFER TO GUIDANCE NOTE FOR ALL DEFINITIONS

### Part 1: Amenity 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

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

#### Score & Notes

3

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

- 5) 100+ Highly suitable
- 4) 40-100 Very suitable
- 2) 20-40 Suitable
- 1) 10-20 Just suitable
- 0) <10\* Unsuitable

\* 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

#### Score & Notes

2

#### 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

1

### Part 2: Expediency 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

5

### Part 3: Decision guide

- Any 0 Do not apply TPO
- 1-6 TPO indefensible
- 7-11 Does not merit TPO
- 12-15 TPO defensible
- 16+ Definitely merits TPO

#### Add Scores for Total:

15

#### Decision:

Create TPO.

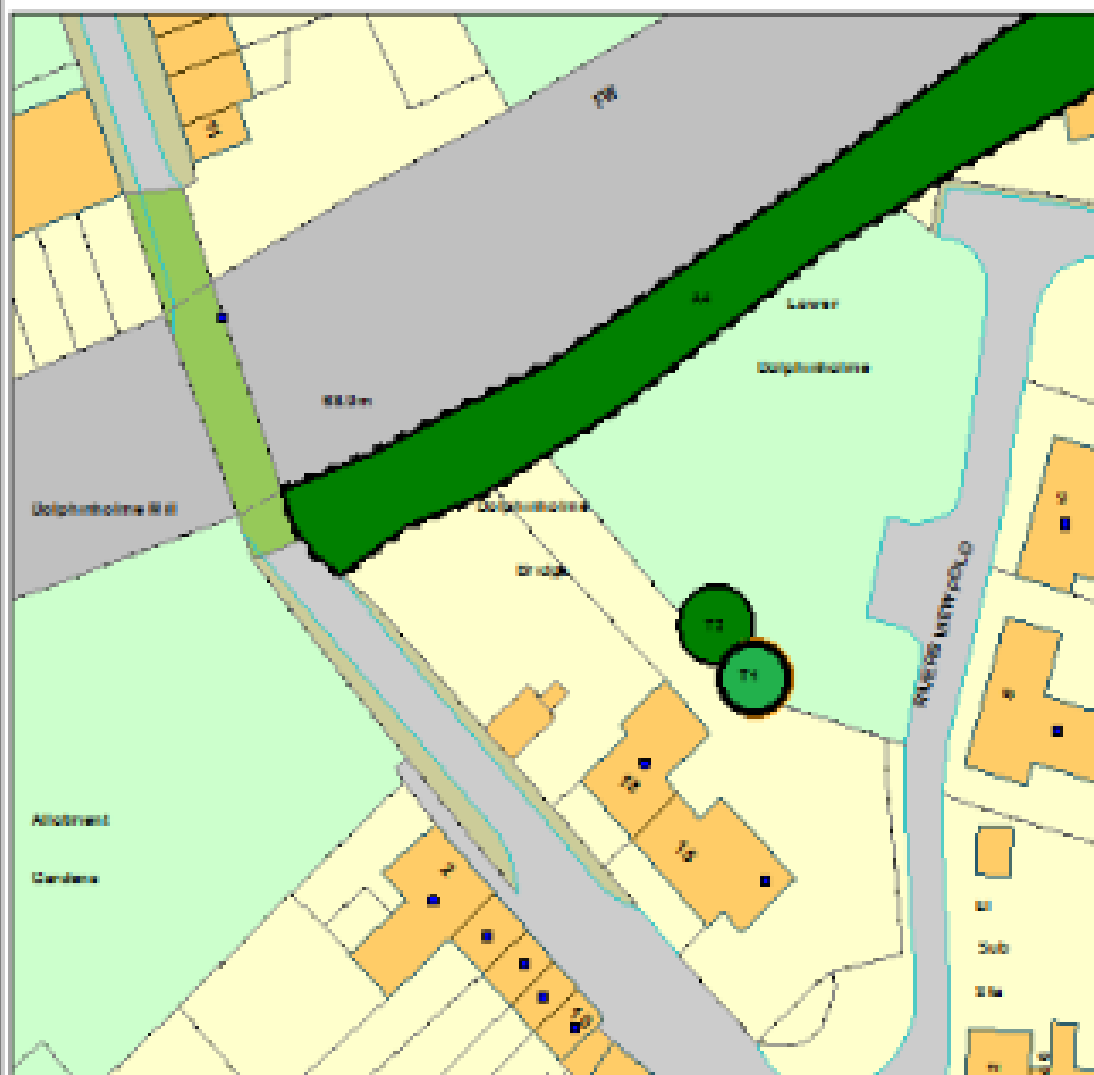


**Above image:** View of T1 and T2 oak trees when looking west from roadside at the frontage of No 8 Rivers View Fold.

## Appendix 2

Wyre Council Tree Preservation Order No10 of 2020

Land at 3 Rivers View Park, Lower Dolphinholme, LA2 9SH




Reproduced from the Ordnance Survey map with permission of the Controller  
of Her Majesty's Stationary Office. Ordnance Survey No. 100 11.

Unauthorized reproduction infringes Crown Copyright and may lead to prosecution or civil proceedings.

Organisation	Wynnt Council
Department	Planning Department
Comments	Not Set
Date	11/09/2020
HGA Number	100018730

## Appendix 3

1 October 2020

Dear Sir / Madam,

Tree Preservation Order 010/2020/TPD – Land at 8 Rivers View Fold, Lower Dolphinhoime, LA2 9SH

The Secretary of State's view regarding TPOs is that they 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.

I object to the provisional order that has been made as follows and on the basis that in all circumstances it is not expedient in the interests of amenity in Lower Dolphinhoime and that the order does not comply with the expressed view of the Secretary of State.

1. The LA should be able to show that a reasonable degree of public benefit would accrue before the TPO is made or confirmed. The tree therefore should normally be visible from a public place such as a road or footpath. It is in fact hidden behind houses, tucked away in a corner on private land and not visible to the public at large. It can only be properly viewed by the three properties in a cul-de-sac overlooking the private garden. If a tree cannot be seen or is just barely visible from a public place the guidance is such that a TPO might only be justified in exceptional circumstances.

2. A tree may be worthy of preservation for its intrinsic beauty or for a contribution to the landscape. There is a super abundance of trees within the curtilage of Lower Dolphinhoime and the conservation area. The removal of this tree will have no impact whatsoever on the aesthetics and overall attraction of the village, its environment and the enjoyment of the public who will be unaware of the tree's existence in any event.

3. The value of the tree is not enhanced by intrinsic beauty or scarcity. It is an immature ordinary oak abundant in the area with little or no importance as a wildlife habitat. Having been planted simultaneously far too close to its neighbouring oak the spread, appearance and health of both trees will decline as they mature having to compete for light, space, nutrition and water. Neither tree as a result will thrive.

4. The tree is dangerous although no more than 20 years old and is or is likely to cause damage to property now or most certainly in the future as it matures. At present it is no more than 6 metres from the foundations of Rose Cottage and was placed far too close to the boundary and the adjoining property. The joint sewer for both properties is less than 3 metres from the tree and unless restrained it is inevitable that damage to pipes by roots alone will ensue.

---

5. The crown of the tree causes substantial trespass and branches already almost touch the roof of Rose Cottage. During Storm Desmond and the Beast from the East Rose Cottage was constantly brushed by branches. Continued growth of the tree combined with climate change will exacerbate the problem.

The Association of British Insurers recommends 30 metres to be a safe distance for an oak tree to be planted from a property. Accordingly in the present circumstances liability could be denied in the event of a claim because the tree has been placed immediately adjacent to a property and is being allowed to grow despite the risks within the knowledge of those involved including the LA.

<https://www.bickeninsurance.co.uk/about-us/latest-news/property-owners-news/a-list-of-trees-and-the-recommended-safe-distance-from-buildings/>