

Report of:	Meeting	Date	Item No.
Mark Billington Corporate Director Environment	Planning Committee	06 January 2021	5

<p><b>Wyre Council Tree Preservation Order No11 of 2020 – 4 Victoria Road, Poulton-le-Fylde, FY6 7JA.</b></p>
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## 1. Purpose of report

- 1.1 To consider the objection to the making of Wyre Council Tree Preservation Order No11 of 2020 – 4 Victoria Road, Poulton-le-Fylde, FY6 7JA.

## 2. Outcomes

- 2.1 To determine whether or not to confirm the Wyre Council Tree Preservation Order No11 of 2020 – 4 Victoria Road, Poulton-le-Fylde, FY6 7JA.

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 No11 of 2020 – 4 Victoria Road, Poulton-le-Fylde, FY6 7JA (“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 21 August 2020 the tree officer received Conservation Area Notification of intention to fell two ash trees in the back garden of 4 Victoria Road, Poulton le Fylde. The reasons provided being that the trees cause excessive shading, the larger of the two has BT wires running through its crown and a number of dead branches. One of the trees is located above the main drain from the property causing concern about potential damage to physical structures. Both trees are located within close proximity to the boundary wall.

On 03 September 2020 the tree officer visited the property to consider the proposed tree work and undertook an appropriate tree evaluation method for preservation orders (“TEMPO”) which guided the subsequent decision to make a TPO. The TPO applies to one tree identified as T1 Ailanthus Altissima common name- tree of heaven.

For clarification, the tree species was incorrectly identified as ash within the Conservation Area Notification. An easy mistake to make given that ash and tree of heaven have similar observed characteristics.

- 5.2** A copy of the completed 03 September 2020 TEMPO survey data sheet relating to T1 of the TPO (denoted as T2 on the TEMPO survey data sheet) along with an associated public visibility image of TPO T1 are appended to this report at Appendix 1.

On 7 October 2020 Wyre Council made Wyre Council Tree Preservation Order No11 of 2020 – 4 Victoria Road, Poulton-le-Fylde, FY6 7JA.

- A copy of the TPO plan is appended to this report at Appendix 2.
- 5.3** 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 November 2020.

- 5.4** Wyre Council received two formal objection letters in regard to the TPO, referred to as objection letter 1 received on 27 October and objection letter 2 received on 28 October 2020.

A copy of objection letter 1 and objection letter 2 are appended to this report at Appendix 3.

## **6. Summary of Objections**

### **Objection letter 1**

- 6.1**
- (i) The proportion of the trees when in leaf cause shading from midway onwards to the rear garden of No 6 Victoria Road impacting on enjoyment of this space.
  - (ii) During winter a large amount of natural debris falls into the rear garden causing an ongoing need to clear drains, gutters and to clean cars reliant on parking to the rear of the property.
  - (iii) Telephone connections for 6 properties feed through the canopy of the trees. Line faults have been caused during windy conditions on numerous occasions.
  - (iv) No 4 and No 6 Victoria Road have cellars below ground level which have been flood damaged resulting from drain failure and water seepage. United Utilities have indicated that extensive rooting from the trees could be a potential cause of drain displacement and blockage.
  - (v) The close proximity of the trees to property and parked vehicles presents danger and a source of worry. During high winds larger natural debris fall into the rear garden.

### **Objection letter 2**

- (i) Telephone connections to properties feed through the canopy of the tree and would cause costly damage if the wires were taken down in high winds, would Wyre Council accept financial

responsibility for damage caused by a tree that the property holder is not permitted to remove?

- (ii) The shape of the tree indicates that it has been cut back. This species aggressively lays down roots when cut back. Those at No 6 Victoria Rd have had extensive investigations and repairs to their drains and were informed that the damage was due to tree roots.
- (iii) It has been noted recently that the cellar at No4 Victoria Road has incoming water issues likely to have been exacerbated by tree roots.
- (iv) The tree blocks out sunlight and has caused damage to the lawn.
- (v) Due to homeworking during the pandemic it is intended that a home office be constructed in the rear garden. Retention of the tree would prevent this. It is considered that Wyre Council is putting Amenity of the public above enjoyment of private property.
- (vi) The tree has outgrown its context, is next to two walls and has laid down roots along the top and side of the wall, again would Wyre Council accept financial responsibility for damage or harm caused?
- (vii) We are at a loss to understand why a non-native tree would be protected.
- (viii) We are happy to replace any tree that is removed from the rear garden.
- (ix) Why place a TPO on this tree. This type of tree is classed as 'an invasive alien' The Invasive Alien Species Order 2019 led to EU legislation being integrated into UK law on 1 December 2019 meaning that there is a legal duty for this tree to be managed and eradicated as per the EU Invasive Alien Species Regulations.

## **7. Response to Objections**

(Please note that within the Conservation Area Notification received 21 August the TPO tree (our reference T1) is indicated as T2.

Objection letter 1 and objection letter 2 raise some generic concerns about possible nuisance/damage due to the trees and where this is the case it is important to note that in relation to TPO T1 the legislation provides for obtaining consents and applies exemptions in certain cases should they be appropriate in future circumstances'

**The Tree Officer's responses to objection letter 1 are as follows:**

## 7.1

- (i), (ii) & (iii) Shading cast to the rear garden of No 6 Victoria Road for a portion of the day results from the three trees at No 4 Victoria Road along with man-made physical structures. The TPO only covers one of these trees, the other two do not merit TPO and could potentially be removed whilst consent may be given to prune the TPO tree thus reducing this shading effect. Moreover, this action would lessen the effect of natural debris falling into the garden of No6 Victoria Road in winter. Gutter guards can prevent debris ingress.
- Removal of the two trees not worthy of TPO and pruning of the TPO T1 could reasonably address issues experienced due to canopy contact with lines.
- (iv) United Utilities have seemingly suggested that the roots of the trees could be a potential cause of drain displacement and blockage resulting in flood damage to the cellars of No4 and No6 Victoria Road. However, no evidence has been provided in support of this point.
- The duty of care rests with the owners of the trees to ensure systematic tree management to enable demonstration that all that is reasonably practicable is being done to reduce the risk of harm or damage associated with said trees.

### **The Tree Officers responses to objection letter 2 are as follows:**

- (i) Removal of the two trees not worthy of TPO and pruning of the TPO T1 could reasonably address issues experienced due to canopy contact with lines.
- (ii) & (iii) Species specific information of root growth rates as a result of pruning is not available for review. It is known that sprouting from about the stem base of this species can be impressive, although this was not noted in relation to TPO T1. No proof has been provided to substantiate that the roots of the trees could be a potential cause of drain displacement and blockage resulting in flood damage to the cellars of No4 and No6 Victoria Road. That said, the plan given in support of the Conservation Area Notification shows the position of the drain to No 4 Victoria Road dwelling as within a few metres south of the trunk of tree No1 (not worthy of TPO). Removal of said tree would take away this tree and the perceived risk.
- (iv) Improved levels of sunlight to the rear garden of No4 Victoria Road could be achieved by removal of the two trees that do not merit TPO and via consent that could be given to prune TPO T1 thus reducing this effect. The view is taken that the benefits of retaining TPO T1 outweigh damage caused to the lawn, which could be brought back into reparation.
- (v) 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 3 September 2020 in respect of TPO T1 Ailanthus, centred on grid reference (E) 335007 (N) 439691. The

TEMPO comprised an amenity assessment in relation to the condition and suitability of this tree along with consideration of tree species, life expectancy, public visibility, other factors and expediency. TEMPO does not cover planning applications or enjoyment of private property within the scorings of its three part assessment although it does provide the opportunity for the surveyor to score 0 for factors where it is considered that a tree is unsuitable. Nonetheless, it was decided that the TPO would be defensible and should be made because 'it is expedient in the interest of amenity'. The public visibility image in Appendix 1 clearly shows the contribution of TPO T1 tree.

- (vi) The tree officer deemed that the tree has not clearly outgrown its context, providing a score of 1 in TEMPO Part 1 (b) which equates to just suitable. Bearing in mind that future pruning such as overall crown reduction of TPO T1 would improve this scoring. No evidence was observed by the tree officer of T1 roots being laid down along the top and side of the wall. This root growth mode is usually associated with climbing plants such as Ivy which was noted on the stem of TPO T1 but also along the garden wall and heavily colonising the third tree nearest to the rear boundary of No4 Victoria Road.
- (vii) Non-native tree are also subject to TEMPO.
- (viii) The ecosystem services and benefits of retaining T1 outweigh those of a replacement standard tree which would be in the young age category and thus provide initially small but graduated contribution.
- (ix) According to the Invasive Alien Species Order (Enforcement and Permitting) 2019 *Ailanthus altissima* is not on the list of species of Union concern. Nor is it documented as such within the Wildlife and Countryside Act 1981 Part II of Schedule 9 – Plants to which section 14 applies (those if released into the wild could cause ecological , environmental or socio-economic harm). *Ailanthus altissima* was introduced in 1751. It is a large ornamental tree found growing in gardens, parks or on highways, tolerant of poor soils and pollution; its foliage and wood characteristics are similar to native ash.
- (x) Wyre Council does not accept financial responsibility for any tree outside of its asset or responsibility. The duty of care rests with the owners of the trees to ensure systematic tree management to enable demonstration that all that is reasonably practicable is being done to reduce the risk of harm or damage associated with said trees.

For completeness, the TEMPO in Appendix 1 undertaken in relation to TPO T1 shows 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 objectors

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 tree 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. The tree presently protected by the TPO was 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 11 of 2020	2020	Room 134 or by email to Tree Officer.

## **List of Appendices**

### **Appendices:**

- 1** –completed TEMPO T1 survey data sheet and also public visibility Image of T1.
- 2** – Wyre Council Tree Preservation Order No11 of 2020 – 4 Victoria Road, Poulton-le-Fylde, FY6 7JA plan.
- 3** – Copy of letters of objections dated 28 October and 27 October.

## **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: 3/9	Surveyor: R. Arrell
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Tree details	Tree/Group No: T2	Species: Tree of Heaven
TPO Ref (if applicable):	Location:	
Owner (if known):		

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 1

#### 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  
3

#### 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:

13

Decision:

Create TPO



**Above image:** View of T1 tree when looking west from roadside between No2 and No4 Park Road.

## Appendix 2

### Wyre Council Tree Preservation Order No11 of 2020

No 4 Victoria Road, Poulton-le-Flyde, FY6 7JA



Scale: 1:273

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Organisation	Wyre Council
Department	Planning Department
Comments	Not Set
Date	21/09/2020
HSA Number	100018720

## Appendix 3

### Objection letter 1

Ref. Wyre Borough Tree preservation order 011/2020/TPO - 4 Victoria Road

Dear Sir,

I am writing with respect to the TPO in accordance with the documentation you sent dated 7/10/20.

My wife and I are the owners of number 6 Victoria Road and have lived in the property since 1989. During this >30 year period the trees referred to in the TPO have grown considerably in size and are now over twice the height they were in 1989.

I am unclear as to whether you are referring to a specific tree, and if so, which one that is, so my comments are made in relation to all the trees at the rear of No 4 Victoria Road.

The continued presence of the trees is causing a number of problems which increase year by year. I list below the range of problems that have occurred and continue to arise.

1. The sheer height and canopy of the trees when in leaf cut out the majority of sunlight in our garden from midday onwards leaving it in the shade, preventing line drying of laundry and enjoyment of our garden.
2. During the winter period, a large proportion of the tree debris falls into our garden resulting in the need to continuously clear drains and gutters and clean our cars parked at the rear of the property. With respect to the parking of cars at the rear of the property, we spent a considerable sum of money converting part of the rear garden to enable us to park as street parking on Victoria Road is almost impossible.
3. Telephone connections for 6 properties feed through the canopy of trees and branch movement on numerous occasions during windy condition have caused line faults.
4. The properties at number 4 and 6 Victoria Road have cellars beneath ground level. Both properties have experienced flood damage arising from drain failures and seepage of water into the foundations and wall cavities of the properties. The extensive root system associated with the trees has been highlighted by United Utilities as the potential cause of drain line displacement and blockage causing drain water to flow back to the properties.
5. The close proximity of the trees to both properties and parked vehicles is a danger and source of anxiety, especially during high winds because of the sheer height of the trees and the size of the overhanging branches. Following storms, heavier tree debris litters our garden with potential to damage the parked vehicles.

In conclusion, because of the reasons I have listed above I object to the preservation order 011/2020/TPO.

Yours sincerely,

## Objection letter 2

28th October 2020

To whom it may concern,

Re: Wyre Borough Tree Preservation Order 011/2020/TPO – 4 Victoria Road

As the co-owner of the above property, I am writing regarding the TPO reference, and raise the following points to support my objection.

The TPO is on an Ailanthus altissima which is one of three exceptionally large trees in our rear garden. We have applied to Wyre Borough Council for permission to fell all three trees, however, one has had a TPO imposed upon it. The reasons for our objection are as follows: -

1. The tree grows into overhead telephone wires for houses and would cause costly damage if the wires are taken down by the tree in high winds. If the tree is to remain, would WBC accept any financial responsibility for damage caused by a tree on our property that we are not allowed to remove?
2. The shape of the tree suggests that it has been cut back prior to us moving into the property, and I understand that this species aggressively lays down roots when it is cut back. I also understand from our neighbours at 6 Victoria Road that they have had extensive investigations and repairs carried out on their drains and were informed that the damage was due to tree roots.
3. 4 and 6 Victoria Road both have cellars and we have recently noticed an increase in issues with incoming water, issues that are like to have been exacerbated by tree root damage.
4. The tree is so large that it blocks out sunlight and has led to damage to our lawn, causing patchy and sporadic grass growth.
5. My husband is self-employed and has been working from home since March 2020 due to the impact of Covid-19. As a result, we plan to erect a home office in the garden. If the tree is to remain in situ, the plan could not go ahead. We believe that by leaving the TPO in place, WBC



is placing greater value upon the amenity of those in the local area than the amenity we have on our own property.

6. The garden is not particularly large, and the tree is far too big for the area. It is next to two walls and, given the root production of the species, there is a risk of damage and destruction of the walls. The tree has laid down roots and spread along the top and sides of the wall in question. Once again, I ask, would WBC accept any financial responsibility for damage, or indeed injury, caused?
7. We are at a loss to understand how a tree that is not native to the UK is protected? The *Ailanthus altissima* is native to northeast and central China, and Taiwan.
8. We are not objecting to having trees in the garden, and we would be happy to replace any trees that we remove. Our objection is to the size of the trees and how disproportionate they are to the size of the garden.
9. Why is this tree subject to a TPO? I understand that this type of tree is classed as an 'invasive alien species', as is the Japanese knotweed. The Invasive Alien Species Order 2019 led to EU legislation being integrated into UK law on the 1st December 2019. This means that there is a legal duty for this tree to be managed and eradicated as per the EU Invasive Alien Species Regulations.

I would be grateful for your considered approval in this case as the existence of a permanent TPO has consequences that impact upon our lives. Failure to allow us to remove the tree in question restricts OUR amenity of OUR garden.

Yours faithfully