

Report of:	Meeting	Date	Item No.
Mark Billington Corporate Director Environment	Planning Committee	3 November 2021	

<p><b>Wyre Council Tree Preservation Order No5 of 2021: Land to the north east of The Iron Horse Public House, Fleetwood Road North, Thornton Cleveleys, FY5 4LH.</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 No5 of 2021: Land to the north east of The Iron Horse Public House, Fleetwood Road North, Thornton Cleveleys, FY5 4LH.

## 2. Outcomes

- 2.1 To determine whether or not to confirm the Wyre Council Tree Preservation Order No5 of 2021: Land to the north east of The Iron Horse Public House, Fleetwood Road North, Thornton Cleveleys, FY5 4LH.
- 2.2 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 No5 of 2021: Land to the north east of The Iron Horse Public House, Fleetwood Road North, Thornton Cleveleys, FY5 4LH. ("the TPO") is confirmed without modifications for the reasons set out in this report.

## 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 interests 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).
- 4.4** 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, although according to guidance these “Other factors” alone would not warrant the making an order.*

*(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.

Within the framework of a TPO, a Local Planning Authority may classify trees as occurring either as individuals, groups, woodlands, or areas.

A woodland designation recognises that natural regeneration from seed is integral to self-sustaining woodland and therefore covers each and every tree irrespective of whether it was growing at the time the TPO was made. The Woodland designation covers future trees. The Woodland designation can make allowance for some degree of woodland management taking place in order to sustain the woodland.

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

- 5.1** On 1<sup>st</sup> June 2021 the tree officer visited site and undertook an appropriate tree evaluation method for preservation orders (“TEMPO”) which guided the subsequent decision to make the TPO. The TPO applies to a broadleaved woodland “W1” comprising of willow, alder, sycamore, hawthorn and elder trees.

A copy of the completed TEMPO survey data sheet relating to the TPO along with associated public visibility images of the TPO are appended to this report at Appendix 1.

- 5.2** On 17 June 2021 Wyre Council made Tree Preservation Order No5 of 2021: Land to the north east of The Iron Horse Public House, Fleetwood Road North, Thornton Cleveleys, FY5 4LH. A copy of the TPO plan and Lancashire Map current aerial imagery showing W1 are 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.
- 5.4** It is understood that a planning application has recently been submitted in relation to the site where W1 is located but the status of this application is invalid
- 5.5** The period for any objections and representations to be made to the Council in respect of the TPO ended on 15 July 2021. On 15 July 2021 Wyre Council received a TPO objection report compiled by a tree consultant forwarded by e-mail from planning consultants acting on behalf of their client the owner of the site.

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

## 6. Summary of Objections

The Conclusion of the TPO objection report provides the grounds of the objection. This has been included below for ease of consideration.

### 6. Conclusion

- 6.1.1. This objection to the recently placed TPO; Tree Preservation Order No 5 of 2021, Land at the north-east of The Iron Horse Public House, Fleetwood Road North, Thornton Cleveleys is on the grounds of;
1. The site is allocated for development under the Wyre Local Plan 2018-2036 Strategy Site Location Hill House Technology Enterprise Zone.
  2. Historical planning application have seen the site half cleared of trees and approved from removal of trees with replacement planting schemes.
  3. The TPO has been made on the grounds of the expediency of amenity. This amenity is limited from 3 out of the 5 viewpoints (as detailed in the TEMPO assessment. From the most accessible viewpoints the trees do not possess significant visual prominence.
  4. From using the TEMPO scoring system 4 trees and 5 groups do not merit the placement of a TPO
  5. The 1 tree and 1 group that could be defensible only scored very low and therefore we challenge their inclusion in the TPO.
  6. The conditions on site could reduce the longevity of trees
  7. The trees overall are predominantly of low quality as individuals. They do not constitute a woodland with the only value coming from the cohesive grouping.
  8. The amenity of the trees only comes from them as group feature by the users of Fleetwood Road, Fleetwood Road North from within the car park of the Iron Horse Public House, albeit this is private land. Development of this site would increase the levels to alleviate the issue of flooding so new trees could be planted of a better quality and designed to create a new amenity feature or longer term tree cover.

## **7.0 Response to Objections**

- 7.1** The site is allocated for mixed use development. The policy sets out that development “shall be supported by a landscape and green infrastructure framework, incorporating structured tree planting”. It is clear that any proposed development application would need to take into account existing trees, W1 and associated amenity values relevant to that application. The policy does regardlessly not justify the clear-felling of existing trees as is suggested in the objection.
- 7.2** Any historical planning applications that relate to the site have received permission at a different time and with different considerations on their own individual merits. They do not set a precedent for clearance of W1. Any new application would need to be considered in relation to all the circumstances and issues relevant to that application at the time of determination...
- 7.3** The tree officer exercised judgement having regard to government guidance when deciding to make the TPO. A Tree Evaluation Method for Tree Preservation Orders (TEMPO) was undertaken on 1st June 2021 in respect of the TPO. The TEMPO comprised an amenity assessment in relation to the condition and suitability of the trees along with retention span, tree species, sizes of the trees included, life expectancy, public visibility, other factors and expediency. There is a perceived threat to trees. The TEMPO assessment showed the making of the TPO to be defensible and the TPO was made ‘because expedient in the interest of amenity to protect the woodland’. The TEMPO scoring also reflects the need for appropriate woodland management requirements. In the view of the tree officer, W1 justifies a score of 3 in relation to providing a suitable degree of relative public visibility as set out in Part 1: c) of the TEMPO.
- 7.4** For completeness, the TEMPO at Appendix 1 undertaken in relation to the TPO shows the amenity and expediency assessments for those aspects of the TPO.
- 7.5** BS5837:2012 provides recommendations and direction relating to interplay of processes between trees, design, demolition and construction. It is not a means of evaluating tree/s suitability for TPO which is the purpose of TEMPO. There is a clear distinction between BS5837: 2012 categorisation and TEMPO. The purpose of a BS5837 2012 Tree Survey is to provide information on the quality and value of existing trees and suitable retention and protection measures in the context of proposals for development. Although the tree consultant has chosen to categorise trees individually and within groups from a BS5837:2012 perspective, the categorisations are not transferable to provide influence over the tree officer’s informed choice to categorise trees collectively as W1 from the viewpoint of undertaking TEMPO. Moreover, the BS5837:2012 cascade chart of tree quality assessment steers clear of referring to visual amenity.

- 7.6** To further demonstrate that the tree officer has correctly identified the trees as a woodland it is noted that the National Forest Inventory (NFI) woodland map (Updated July 2021) covering all UK forest and woodland over 0.5 hectare shows the position of W1 as a broadleaved woodland of 0.68 ha in area.
- 7.7** For diversity, a woodland will contain a mixture of different species of trees, in different conditions and of different ages. A copy of W1 associated NFI woodland map is also appended to this report at Appendix 2.
- 7.8** W1 comprises of tree species that are suitable for the environmental conditions prevalent at the location. The current area cover of W1 is evidence to the success of regeneration and succession changes that have taken place since partial clearing circa 2009. Also, the position of W1 is displayed on OS 1840 first edition map 1:10560, OS 1890 First Edition 1:2500, OS 1950 1:50000 mapping, aerial imagery from 1940's and 1960's. This indicates that there is likely to have been continuous woodland cover at this location to a varying extent since records have become available.
- 7.9** Advice pertaining to Planning Committee and its procedures along with a copy of this report relating to the TPO have been forwarded to the planning consultant acting for the site owner in reasonable advance of the meeting of Planning Committee on 3 November 2021.

### **Concluding remarks**

It is considered that the TPO has been properly made in the interests of securing the contribution and benefit that the TPO applies to the public amenity in the area. The TPO protects important elements of the local landscape and contributes to the local environment. W1 presently protected by the TPO has been properly categorised and 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 expediency assessments 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.

Financial and Legal Implications	
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	25 October 2021

List of background papers:		
name of document	date	where available for inspection
Wyre Council TPO 5 of 2021	17 June 2021	Room 134 or by email to Tree Officer.

## **List of Appendices**

### **Appendices:**

- 1 –TEMPO survey data sheet and also images of W1.
- 2 –TPO plan , Lancashire Map current aerial imagery showing W1, National Forestry Inventory woodland map showing position of W1 as broadleaved woodland.
- 3 – Copy of the TPO objection report.

## **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: 1/6/21	Surveyor: R. Arnold
Tree details	Broadleaved Woodland ("W1") comp-willow
TPO Ref (if applicable):	Tree/Group No:
Owner (if known):	Species: alder, sycamore
	Location: land northeast of hawthorn & elder.
	Iron Horse, Fleetwood Road North, Thornton

REFER TO GUIDANCE NOTE FOR ALL DEFINITIONS

#### Part 1: Amenity assessment

a) Condition & suitability for TPO; where trees in good or fair condition have poor form, deduct 1 point

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

\* Relates to existing context and is intended to apply to severe irreparable 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

4

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 arboricultural features, or veteran trees                           | Score & Notes |
| 4) Tree groups, or 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) |               |

Score & Notes

1

#### Part 2: Expediency assessment

Trees must have accrued 9 or more points to qualify

- |                               |               |
|-------------------------------|---------------|
| 5) Immediate threat to tree   | Score & Notes |
| 3) Foreseeable threat to tree |               |
| 2) Perceived threat to tree   |               |
| 1) Precautionary only         |               |

Score & Notes

2

#### 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: View looking east towards W1 from Fleetwood Road North.



Above: Streetview – view of W1 when facing south east from north side of the round about (W1 to right of image centre), Fleetwood Road North.

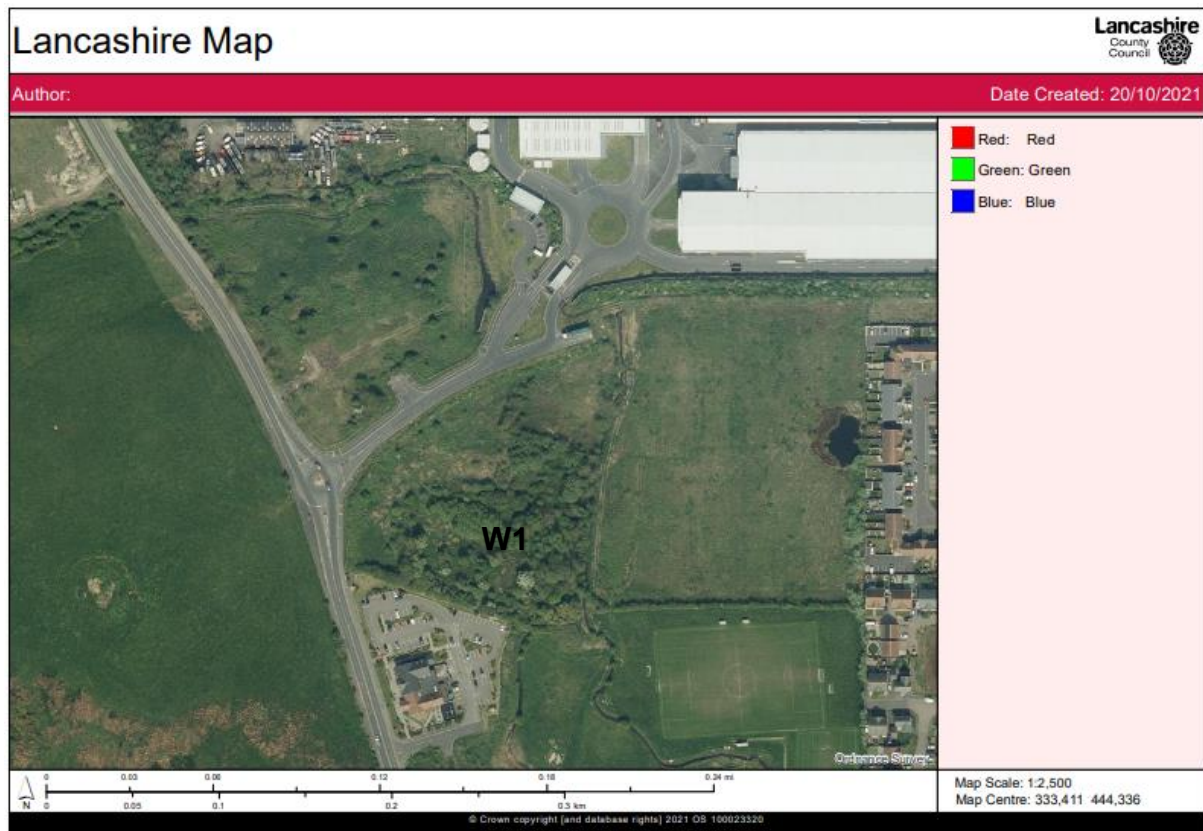


Above: View looking north east towards W1 from Fleetwood Road North.

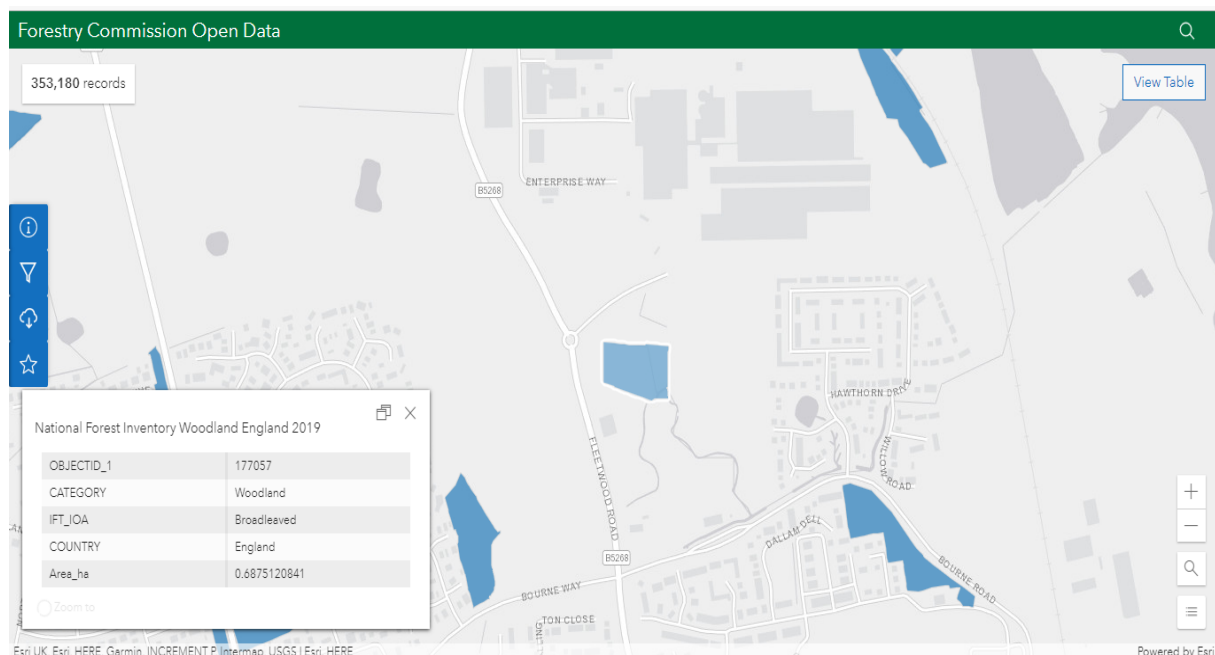
## Appendix 2

Wyre Council Tree Preservation Order No5 of 2021

Land to the north east of The Iron Horse Public House, FY5 4LH.



Above: Lancashire Map current aerial imagery with position of W1 marked.



Above: National Forestry Inventory (Updated July 2021) showing position of W1 as broadleaved woodland (at map centre highlighted as shape with mid blue infill with white outline).

## Appendix 3



