

Report of:	Meeting	Date	Item No.
Mark Billington Service Director People and Places	Planning Committee	6 June 2018	9

**Wyre Borough Council Tree Preservation Order No 5 of 2018 –
Land to the east of Tithebarn Park and to the north east side of
Tithebarn Street, Poulton-le-Fylde, FY6 7BY.**

1. Purpose of report

- 1.1** To consider the objection to the making of Wyre Borough Council Tree Preservation Order No 5 of 2018 – Land to the east of Tithebarn Park and to the north east side of Tithebarn Street, Poulton-le-Fylde, FY6 7BY.

2. Outcomes

- 2.1** To determine whether or not to confirm the Wyre Borough Council Tree Preservation Order No5 of 2018 – Land to the east of Tithebarn Park and to the north east side of Tithebarn Street, Poulton-le-Fylde, FY6 7BY.

Once a TPO is made it is 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 Borough Council Tree Preservation Order No5 of 2018- Land to the east of Tithebarn Park and to the north east side of Tithebarn Street, Poulton-le-Fylde, FY6 7BY (“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 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 continuity”*.
- 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. 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 Area TPO

- 5.1** An Area category protects all trees within an area as demarcated on the Order map. The Area category protects only those trees present at the time of making. The Area category is intended for short-term protection and only used as a temporary measure until such times as a full assessment and reclassification can occur.

In March 2018 the Tree Officer was requested by the Head of Planning Services to appraise an area of trees located on land to the east of Tithebarn Park and to the Northeast side of Tithebarn Street for TPO potential. The Tree Officer visited site on the 12 March 2018 to investigate and undertook a tree evaluation method for preservation orders survey data sheet (“TEMPO”) which guided the subsequent decision to make a tree preservation order.

Copies of the completed 12 March 2018 TEMPO Survey data sheet and public visibility images of ‘A1’ Area of Wyre Borough Council Tree Preservation Order No5 of 2018 - Land to the east of Tithebarn Park and to the north east side of Tithebarn Street, Poulton-le-Fylde, FY6 7BY are appended to this report at Appendix 2.

- 5.2** On 13 March 2018 Wyre Borough Council made the TPO. 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 10 April 2018.

A copy of the TPO plan is appended to this report at Appendix 1.

- 5.3** Wyre Council received a formal objection to the TPO dated 9 April 2018 from an arboricultural consultant as instructed by the owner of the land to the east of Tithebarn Park and to the north east side of Tithebarn Street, Poulton-le-Fylde, FY6 7BY. The objection was attached to an e-mail from the Consultants whose client owns the land to which the Order relates.

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

Wyre Council received a letter of representation in support of the TPO dated 29 March 2018. A response to the letter of representation was sent on 4 April 2018. Copies of both are appended to this report at Appendix 4.

6. Summary of Objections

- 6.1**
- The Order seeks to protect some material that is in poor condition / advanced decline, of generally low value and limited potential.
 - The Order seeks to protect some items that are clearly a hedgerow, or that would be considered as a shrub layer, coppice or similar, of short life expectancy and clearly inappropriate for inclusion within the Order.
 - No information has been provided or indicated as being available to show how the trees have been assessed for amenity value. As such the reasonableness of the Order cannot be fully assessed.
 - It has been advised that the material that was in fact appropriate for inclusion within an Order was not under threat and it was not therefore expedient for the order to be made.
 - The Order is inappropriate and unnecessary, the trees have not been fully or reasonably assessed and the reasoning for the imposition both inaccurate and speculative.

The consultant has also requested advice on relevant procedures and that a copy of the report relating to the TPO be forwarded in reasonable advance of the Committee date.

7. Response to Objections

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

- 7.1**
- Any trees which are deemed unsuitable for inclusion within the Order can be excluded when reclassification occurs. N.B. Low numbers of trees are expected to be excluded based on the Tree and Woodland Officer's observations on 12 March 2018.

- Hilliers and Coombes (2007) indicate that the common Hawthorn is a native small tree, Hazel a native small multi-stemmed tree or large shrub, Elder a native small tree or large shrub and Blackthorn a small bushy tree or large shrub. The Hawthorn, Hazel, Elder and Blackthorn trees observed on 12 March 2018 by the Tree and Woodland Officer were of a size to be considered as trees.

DEFRA (2007) provides a definition of hedgerow:

“Any boundary line of trees or shrubs over 20m long and less than 5m wide at the base, provided that at one time the trees or shrubs were more or less continuous. It includes an earth bank or wall only where such a feature occurs in association with a line of trees or shrubs. This includes ‘classis’ shrubby hedgerows, lines of trees, shrubby hedgerows with trees and very gappy hedgerows (where each shrubby section may be less than 20m long, but the gaps are less than 20m)”

Area 1 from the Order is approximately 18 metres in width at its narrowest.

Area 1 from the Order is not a hedgerow nor captured by the Hedgerow Regulations 1997 and in nature is appropriate for protection in the Order.

- The creation of the Order has been in accordance with current government guidance, authority procedure and undertaken in an open and transparent manner by the Tree and Woodland Officer. An onsite Tree Evaluation Method for Tree Preservation Orders (TEMPO) was undertaken on 12th March 2018 which comprised an assessment in relation to the condition and suitability of the trees along with remaining tree life expectancy, public visibility, other factors and expediency. It was concluded that the TPO should be made because of expedience in the interest of amenity continuity due to a perceived threat to the trees.
- The last point of objection made by the consultant is considered by the Tree and Woodland Officer to be incorrect.

Advice pertaining to Planning Committee and its procedures along with a copy of this report relating to the TPO have been forwarded to the Consultants in reasonable advance of the meeting of Planning Committee on 6th June 2018.

Concluding remarks

Officer view is that the Area TPO has been properly made in the interests of securing the contribution and benefit of the trees to the public amenity in the area. The Area TPO protects important element of the local landscape and contributes to the local environment.

Officer view is that the Area TPO is fully justified and should be confirmed without modification. It will provide protection until such time as an in-depth assessment and reclassification can occur.

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. 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

risks/implications	✓ / x
asset management	x
climate change	✓

sustainability	x
health and safety	x

data protection	x
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report author	telephone no.	email	date
Ryan Arrell	01253 887614	Ryan.Arrell@wyre.gov.uk	May 2018

List of background papers:		
name of document	date	where available for inspection
Wyre Council TPO 5 of 2018	13 March 2018	Room 134 or by email to Tree Officer.

List of Appendices

Appendices:

- 1** – Wyre Council Tree Preservation Order No5 of 2018- Land to the east of Tithebarn Park and to the north east side of Tithebarn Street, Poulton-le-Fylde, FY6 7BY plan.
- 2** –12 March 2018 completed TEMPO Survey data sheet and also Public visibility Images of Area 'A1'.
- 3** - Copy of objection made on 9th April 2018.
- 4** – Copies of letter of representation dated 29th March 2018 and response letter dated 4th April 2018.

References List

J. Hilliers and A. Coombes, *The Hillier manual of Trees and Shrubs* (2007), David and Charles.

The Hedgerow Survey Handbook. (2007) DEFRA.

Tree Preservation Orders and trees in Conservation Areas. GOV.UK, (2014) Accessed 14/05/18 via <http://www.gov.uk/-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

Wyre Council Tree Preservation Order No.5 of 2018

Not Set



Legend

Wyre Council Tree Preservation Order No5 of 2018: Land to the east of Tithebarn Park and to the north east side of Tithebarn Street, Poulton le Fylde, FY6 7BY.

Scale 1:1651



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Organisation	Wyre Council
Department	Planning Department
Comments	Not Set
Date	12 March 2018
S/LA Number	100018720

Appendix 2

TREE EVALUATION METHOD FOR PRESERVATION ORDERS - TEMPO

SURVEY DATA SHEET & DECISION GUIDE

Date: 12/3/18	Surveyor: [REDACTED]
Tree details TPO Ref (if applicable): Owner (if known):	Area Tree/Group No: 1 Location: Species: sycamore, elms, Holly, hawthorn, Hazel, ash, blackthorn Land to the east of Titheborn Park and to the northeast side of Titheborn Street.

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 |

Score & Notes

3

* 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 |
| 2) 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 | Score & Notes |
| 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

1

Part 2: Expediency assessment

Trees must have accrued 10 or more points to qualify

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

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:

12

Decision:

Create TPO.

Area A1 viewed looking north from Tithebarn Street.



Tithebarn Park: Area A1 viewed to the North East.



Appendix 3



For the attention of [REDACTED]
Trees and Woodland Officer
Wyre Council
Wyre Civic Centre
Breck Road
Poulton – le- Fylde
FY6 7PU
9th April 2018

Dear Sir,

Objection to The Wyre Council Tree Preservation Order – 005/2018/TPO – Land to the East of Tithebarn Park and to the north east side of Tithebarn Street, Poulton-le-Fylde, FY6 7BY

Your Ref: PLG/8/ 13th March 2018

On the instructions of my Client, I wish to register an objection to the above Tree Preservation Order under the terms and conditions of the Town and Country Planning (Tree Preservation) (England) Regulations 2012

For a Tree Preservation Order to be made, the Council must be able to demonstrate that it appears to them to be “**expedient** in the interests of **amenity** to make provision for the preservation of trees or woodlands in their area”.

Amenity

Guidance from the Department for Communities and Local Government advises that: When considering whether trees should be protected by an Order, authorities are advised to develop ways of assessing the amenity value of trees in a structured and consistent way, taking into account the following criteria:

Visibility

The extent to which the trees or woodlands can be seen by the public will inform the authority’s assessment of whether the 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 its or their characteristics including:

- size and form;
- future potential as an amenity;

- • rarity, cultural 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. These factors alone would not warrant making an Order.

With reference to the trees identified in the Order, there is no information provided or offered to show how the amenity of the trees has been assessed, that removal would have a significant negative impact on the local environment and its enjoyment by the public or that protection would bring a reasonable degree of public benefit in the present or future.

Indeed, the Formal Notice simply states that:

'We made this Order because it is expedient in the interest of amenity continuity to the locality.'

It is possible that a TEMPO system or similar was utilised to assess amenity and if so, the inclusion of such information within the notification to the landowner may have simplified their understanding of why the Order was made and avoid the necessity of preparing an objection. Regardless, a walkover inspection of the area under consideration was recently undertaken by myself and from this it was immediately evident that whilst some individual trees did exist, much of the vegetation comprised of old Hawthorn hedgerows all of which could reasonably be described as such and which could be reduced by layering or cutting to produce more manageable and formal features.

Hedgerows should not be included within TPO's, having their own protection – if appropriate, under the Hedgerow Legislation. It is understood that these hedges existed to either side of the railway track and to the Station that historically existed adjacent to the Park.

The reclamation of the hawthorn hedging – including removal of undesirable species within the hedge such as Elder that reduce their efficacy as a security / control feature would therefore substantially reduce the “amenity” that the Order states.

It was also noted that some items were in poor condition and would certainly not be considered to have a useful life expectancy approaching 10 years and would therefore be inappropriate for inclusion within an Order. From these comments and observations, it is reasonable to conclude that in terms of amenity, there is no evidence to support that the vegetation is of value which together with the evidence of the condition of some material suggests that the Order is both unreasonable and inappropriate.

Expediency

Notwithstanding that some of the trees included within the Order may contribute to amenity value, it must also be expedient for the Council to make those trees the subject of a Tree Preservation Order.

It is accepted that some discussions may have taken place regarding the alternative use of this land but, there was no intention to immediately clear or otherwise disturb the area without appropriate negotiations.

As such it is not considered that it was expedient for the Council to serve an Order and that reasonable negotiations may well have resolved the matter.

It is not therefore considered expedient in the interest of amenity for the Council to make this Tree Preservation Order.

Other Considerations.

The Order states in the schedule that tree species within the Area include: Sycamore, Hawthorn, Elder, Holly, Ash, Hazel and Blackthorn.

Of these it is generally considered that Hawthorn, Elder, Hazel and Blackthorn are rarely of a size and quality that would be considered as trees and are invariably classified as shrubs, hedging or coppice material. Their habit permits regular and intensive management and it is why such materials are favoured for hedging / coppicing.

Also of these, Elder in particular has only a comparatively short life expectancy and due to the age and quality of the material observed, as discussed previously a 10 year useful life expectancy would be considered as optimistic.

As far as we are aware the "trees" have no historical value although the hedgerows do appear to define the extents of the original railway track which, would be considered as the normal / typical boundary treatment to adjacent land for security.

Finally, the guidance states that:

'The area category is intended for short-term protection in an emergency and may not be capable of providing 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.'

Unfortunately, no information has been provided to indicate if or when the trees will be fully assessed and reclassified. Advice in instances such as this would assist in permitting objectors to fully assess the situation and may assist in communications with the Council thereby saving resources.

As such the reasoning for the making of the Order appears somewhat speculative.

Conclusion.

It appears that this Order seeks to protect some material that is in poor condition/advanced decline, of generally low value and limited potential. It also seeks to protect some items that are either clearly a hedgerow or, that would be considered as shrub layer, coppice or similar, of short life expectancy and clearly inappropriate for inclusion within an Order.

No information has been provided or indicated as being available to show how the trees have been assessed for amenity value. As such the reasonableness of the imposition of the Order cannot be fully assessed.

It has also been advised that the any material that was in fact appropriate for inclusion within an Order was not under threat and it was not therefore expedient for the Order to be made.

In the light of the foregoing comments and observations it appears that the Order is inappropriate and unnecessary, the trees have not been fully or reasonably assessed and the reasoning for the imposition both inaccurate and speculative.

As such it is respectfully requested that it be withdrawn.

When considering this objection, it should be noted that since LPA's are responsible for making and confirming Tree Preservation Order's their decisions, as noted in "A Guide to the Law and Good Practice", should be taken in an even handed and open manner.

In respect of the Human Rights Act 1998, it provides that public authorities must now act in a manner that is compliant with the terms of the European Convention on Human Rights, article 6 of which provides that a person's civil rights should be determined by "an independent and impartial tribunal".

Since the Order is confirmed by the same authority which made it in the first place, the authority may be open to the criticism that it has only paid lip service to any objection and has in reality simply rubber stamped its original decision.

Indeed, Government guidance states that:


'Authorities should bear in mind that, since they are responsible for making and confirming Orders, they are in effect both proposer and judge. They should therefore consider how best to demonstrate that they have made their decisions at this stage in an even-handed and open manner.'

In order to assure my Client that the matter will be correctly considered, appropriate advice on your procedures and how impartiality and independence are assured would

be most welcome. Furthermore, it would be appreciated that any reports by Officers to the relevant Committee in respect of this matter be copied to me in reasonable advance of the Committee date so that if necessary, responses can be prepared.

I trust that this letter addresses all the appropriate issues. Should there be any queries, or if you wish to discuss the matter further, please contact me.

Yours faithfully

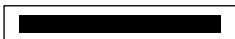


Appendix 4



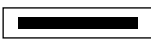
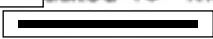
29th March 2018

Your ref: PLG/8/


Council Tree Officer,
Wyre Borough Council,
Civic Centre,
Breck Road,
Poulton le Fylde,
FY6 7PU.

Dear 

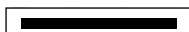
Wyre Borough Council Tree Preservation Order 005/2018/TPO

I refer to the letter from  dated 13th March which, although addressed to me, greets me as  and our telephone conversation of this afternoon.

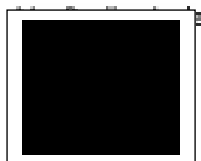
Whilst I am in full agreement with tree preservation, I would wish to retain the right to request that the trees be pruned should their growth become detrimental to the use of the land.

Yours sincerely,









**Please ask
for:**

Email:

Tel No:

Our Ref:



01253 887614

Wyre Council Tree
Preservation Order No5 of 2018:
Land to the east of Tithebarn
Park and to the north east side of
Tithebarn Street, Poulton-le-
Fylde, FY6 7BY.

Date: 04 April 2018

Dear 

Re: Wyre Council Tree Preservation Order No5 of 2018: Land to the east of
Tithebarn Park and to the north east side of Tithebarn Street, Poulton-le-Fylde, FY6
7BY.

Please accept my apology for the confusion caused by the error made within the
related letter from Legal Services dated 13th March 2018.

Thank you for your letter of 29th March 2018 and for your support in regard to the
Tree Preservation Order 'TPO'. After careful consideration I can confirm that I
understand the need that arises to reduce back encroachment to the boundary of the
TPO to allow efficient use of the land to the immediate east. As such I feel it
appropriate to advise in regard to the TPO that reducing of lateral branches back to
the boundary is permitted under common law.

Any other tree works outside of the aforementioned scope would be subject to the
formal TPO application process.

Informative: I would advise you to check all trees for the presence of protected
species before undertaking any work, and if any breeding birds or bats are
encountered to cease work immediately and contact Natural England.

Yours sincerely

Ryan Arrell
Tree and Woodland Officer

