

Report of:	Meeting	Date	Item No.
Mark Billington Corporate Director Environment	Planning Committee	2 March 2022	

Wyre Council Tree Preservation Order No 14 of 2021: Land at Westfield Farm, Garstang By-Pass Road, Claughton-on-Brock, PR3 0PU

#### 1. Purpose of report

1.1 To consider the objection to the making of Wyre Council Tree Preservation Order No 14 of 2021: Land at Westfield Farm, Garstang By-Pass Road, Claughton-on-Brock, PR3 0PU

#### 2. Outcomes

- 2.1 To determine whether or not to confirm the Wyre Council Tree Preservation Order No 14 of 2021: Land at Westfield Farm, Garstang By-Pass Road, Claughton-on-Brock, PR3 0PU
- 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 No 14 of 2021: Land at Westfield Farm, Garstang By-Pass Road, Claughton-on-Brock, PR3 0PU be 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 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.
- 4.6 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 27 October 2021 Forestry Commission England formally consulted the Tree Officer on a Felling License application FL 010/2949/2021 at Westfield Farm which relates to woodland compartments 1-5.
- 5.2 The Tree Officer visited Westfield Farm on 11 November 2021 and was shown woodland compartments 1-5 by the proprietor. The Tree Officer observed mainly mature and late maturity mostly broadleaved and occasional coniferous trees within the woodland compartments. Chief amongst the trees are the presence of oak trees which are a keystone species from an ecological perspective. Also observed were the ash species therein which are showing significant symptoms of *H.fraxineus* ash dieback disease. The woodland compartments have received minimal management interventions for a number of decades. The farmland is located on the Fylde Coastal Plain and the woodlands are subjected to the westerly winds coming off The Irish Sea. The woodlands are currently providing eco system services, are of ecological benefit and are sequestering and storing carbon.
- 5.3 The Tree Officer subsequently contacted the Forestry Commission Woodland Officer who clarified that the felling application is for consent to

- clear fell compartments 1-5 subject to restock of which 50% will be from natural regeneration and 50% from planting.
- 5.4 On 11 November 2021 the Tree Officer undertook an appropriate tree evaluation method for preservation orders ("TEMPO") which guided the subsequent decision to make the TPO. The TPO applies to woodland compartments 1-5 here on in referred to as W1 to W5. Copies of the completed TEMPO survey data sheets relating to the TPO along with associated images of the TPO are appended to this report at Appendix 1.
- 5.5 On 19 November the Tree Officer replied with formal comments to Forestry Commission England that clear felling would be excessive and that he would therefore be supportive of selective thinning as an alternative and as a means of advancing the quality and growth of retained trees. Thinning could be concentrated on trees within the centre and leeward sections of the compartments, avoiding the windward sections to prevent increased in air flow through.
- 5.6 On 25 November 2021 Wyre Council made Tree Preservation Order No 14 of 2021: Land at Westfield Farm, Garstang By-Pass Road, Claughton-on-Brock, PR3 0PU. A copy of the TPO plan is appended to this report at Appendix 2.
- 5.7 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.
- 5.8 The period for any objections and representations to be made to the Council in respect of the TPO ended on 23 December 2021. The Council received a letter dated 17 December from the proprietor of Westfield Farm that related to Westfield Solar Farm and the TPO. It was not made clear within the contents of the letter that it was an objection to the TPO although it could be interpreted as such. On 26 January a Senior Planning Officer spoke to the proprietor of Westfield Farm who confirmed that the latter desired for the letter to be treated as an objection to the TPO. A redacted copy of the letter of objection is appended to this report at Appendix 3.
- 5.9 A decision regarding Felling License application FL 010/2949/2021 is yet to be determined but it is hoped that the outcome will underpin the need to adhere to UKFS guidelines regarding Forests and Biodiversity and Veteran tree management.
- 5.10 On the 18 January the Tree Officer received the results of a data search for Westfield Farm from Lancashire Environmental Record Network. Centering on the Grid reference 349438 44177 at Westfield Farm the following has been confirmed:
  - Within 500m buffer Priority habitat deciduous woodlands, three field records relating to Lancashire Key Species which are recognised for importance locally and/ or internationally. There is no Public Right Of Way.

- Width of buffer between 500m and 1km - Priority habitat deciduous woodlands, eighteen field records relating to Lancashire Key Species, four field records relating to presence of bats, two field records from South Lancashire Bat Group relating to bat roosts and potential bat roosts, one traditional orchard. Four Public Right Of Way footpaths are to the north and west of Catterall Lane.

#### 6. Summary of Objections

Please note that a number of comment have been made in the letter of objection relating to the Tree Officers visit. These comments are not objections and the prelude within the Tree Officers response to objections provides a summary of the Tree Officers recollection of his visit to Westfield Farm on 11 November 2021.

- The imposition of the TPO precludes management and maintenance of the woodland compartments and prevents compliance with Condition 11 of permitted application No: 19/00862/LMAJ which states that "All trees and hedgerows on site identified on the URS Figure 1.5 Ecological Assesment (Approved under 14/00909/LMAJ) shall be retained throughout the lifetime of the development".
- The ash trees under the TPO will eventually die and fall over resulting in ever increasing exposure of remaining trees to wind damage. Four trees were lost to wind and storm damage in Winter 2020 another Four trees lost during storm Arrwen 26<sup>th</sup>-27<sup>th</sup> November 2021. Within the next decade the majority of trees in Westfield woods will have died or been blown over. The true effect of the TPO is to destroy the woods.

#### 7.0 Response to Objections

- 7.1 The Tree Officer attended Westfield Farm on 11 November 2021 and introduced himself as the Tree and Woodland Officer based in the Parks Section. He explained that the Forestry Commission had consulted him on the Westfield Farm felling license application and that he was in the area so took the opportunity to visit. This action was taken as he had not been provided with proprietorship details nor contact number due to GDPR. The Tree Officer was then shown woodland compartments 1-5 on tractor and on foot.
- 7.2 The proprietor of Westfield has recently been advised by a Senior Planning Officer that, even if the TPO is confirmed, there is nothing to stop him from applying to amend the approved landscaping scheme.
- 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 11 November 2021 in respect of the TPO. The TEMPO comprised an amenity assessment in relation to the condition and suitability of the trees along

- 7.4 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 W1 W5 woodlands.
- 7.5 The TEMPO scoring also reflects the need for appropriate woodland management requirements. For completeness, the TEMPO data sheets relating to W1-W5 at Appendix 1 undertaken in relation to the TPO shows the amenity and expediency assessments for those aspects of the TPO.
- 7.6 Where no felling licence is in place the works that a woodland proprietor could instruct for include thinning up to 5 cubic metres of growing trees per calendar quarter.
- 7.7 A standard felling licence provides a 5 years period to implement the works it approves and ensures compliance with the UK Forestry Standard. If a Forestry Standard compliant woodland management plan is produced, a felling licence can be issued for ten years. Felling licences are usually conditional with an expectation for restocking.
- 7.8 The Forestry Act 1967 provides that if an application is made for a felling licence in respect of trees subject to a tree preservation order and consent under the Tree Preservation Order Regulations would be required, then as part of the licence application process the Forestry Commission must consult with the local authority that made the tree preservation order. Forestry guidance provides that felling proposals should be in the spirit of maintaining a tree preservation order that is in place. If the local authority objects to the licence application, the matter will be determined under planning-related appeal processes. Further the Forestry Commission has the option of referring the application to the planning authority that made the tree preservation order to deal with under the planning legislation. Where the planning authority does not object and the Forestry Commission grants a felling licence under the Forestry Act 1967 the local authority's further consent under the tree preservation order is not required providing that the works are in compliance with the felling licence. The legislation therefore balances the relationship between planning and forestry controls.
- **7.9** Felling License application FL 010/2949/2021 is yet to be determined.
- 7.10 If the TPO is confirmed, an application for consent regarding TPO tree works including justification, a related schedule and plan would continue to be required for consideration in the absence of consent under a felling licence. The TPO is a means of ensuring that thinning works under 5 cubic metres per calendar quarter are in accordance with good forestry practice to protect the trees and do not accumulate to a detrimental impact.
- **7.11** In any event, removal of ash trees to address the spread of Ash Dieback Disease may be permissible by the Forestry Commission as an exception

from the need to gain consent under a formal felling licence providing that the Forestry Commission are supplied with the details in advance, such as a location plan, numbers of trees, sizes and images of evidence and agree the proposed works. Copying in the local authority in these circumstances would be likely to be sufficient for TPO record purposes and agreement.

- 7.12 Before leaving Westfield Farm on 11 November 2021 the Tree Officer explained to the proprietor that in addition to submitting consultation comments to the Forestry Commission regarding FL 010/2949/2021 he would be considering whether the making of a Tree Preservation Order ("TPO") would be expedient.
- 7.13 The TPO has not been placed with the intention to be a barrier to beneficial woodland management. It has been created to facilitate sustainable woodland management. An exception to gain consent under the TPO would apply in relation to complying with woodland works granted by the FC under the Forestry Act 1967. Moreover, any woodland work that is not captured by the parameters of an Forestry Commission approved felling license but has consent under the TPO could have a condition attached relating to tree replacement therein to aid sustainability.
- **7.14** In all the circumstances, officer view is that it is expedient in the interests of amenity to make W1 to W5 subject of a confirmed tree preservation order.
- 7.15 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 2 March 2021.

#### 8.0 Concluding remarks

- 8.1 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 to W5 presently protected by the TPO have been assessed in a structured and consistent way using an approved method.
- 8.2 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  $\checkmark$  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	х
equality and diversity	х
sustainability	✓
health and safety	х

risks/implications	√/x
asset management	X
climate change	✓
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	11/02/2021

List of background papers:					
name of document	date	where available for inspection			
Wyre Council TPO 14 of 2021 25 November 2021		Room 134 or by email to Tree Officer.			

#### **List of Appendices**

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- 1 –TEMPO survey data sheets and also public visibility images of W1, W2 and W3.
- 2 -TPO plan.
- **3** Redacted copy of letter of objection.

### **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 <a href="http://www.flac.uk.com/wp-content/uploads/2014/12/TEMPO-GN.pdf">http://www.flac.uk.com/wp-content/uploads/2014/12/TEMPO-GN.pdf</a>

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

**Appendix 1** 

	SURVEY DATA	SHEET & DECISION GUIDE			
Date: \	11/21 Surveyor: R. Al	RELL			
Tree details	. Land	produced Back, Ash, Line effroup No: 1 Species: Oak, Sycanox			
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art 1: Amenity ) Condition &	assessment suitability for TPO				
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Fair/satisfact		State of Hotel			
) Poor	Unlikely to be suitable	13			
Dead/dying/					
Relates to exis	ting context and is intended to apply to :	severe irremediable defects only			
Retention sp	an (in years) & suitability for TPO				
) 100+	Highly suitable	Score & Notes			
40-100	Very suitable				
20-40	Suitable	14			
10-20	Just suitable	14			
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-1) Trees with poo	or form or which are generally unsuitable	for their location	
Part 2: Expedienc			
Trees must have a	ccrued 10 or more points to qualify		
5) Immediate thre	eat to tree inc. s.211 Notice	Commo O Mantes	
3) Foreseeable th		Score & Notes	
2) Perceived threat to tree			
1) Precautionary only			
Part 3: Decision g	uide		
Amr O	Do not apply TPO		
Any 0 1-6	TPO indefensible	Add Scores for Total: Decision:	
7-11	Does not merit TPO	14 Create 1Po.	
12-15	TPO defensible	14 Ilrean Tro.	
16+	Definitely merits TPO	1,	



Above image: W1 (Shelley Wood) when looking south from Catterall Lane.



Above image: View from Westfield Road when looking south west towards Westfield Farm with W2 (Roundwood) and W3 (Westfield Square Wood) visible.

## Appendix 2

Wyre Council Tree Preservation Order No 14 of 2021 Land at Westfield Farm, Garstang By-Pass Road, Claughton-on-Brock, PR3 OPU Transportation



Legend		Scale 1 4945				
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# Appendix 3

Letter of Objection received on 17 December 2021.

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T ALSO RECALL COMMING OFF THE BOOKE AND TALLING TO JON KYLE AND REPRESENTE TO HIM HOW DEFRESHING IT WAS TO TALK TO A PLANNER WITH COMMON SONSE.

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CONTO DUAN ADDREL - Postes + Recroatice Jost.