

Report of:	Meeting	Date	Item No.
Mark Billington Service Director People and Places	Planning Committee	5 September 2018	6

**Wyre Borough Council Tree Preservation Order No 6 of 2018 – Land adjacent to No 57 Oldfield Carr Lane, Poulton le Fylde, FY6 8EN.**

**1. Purpose of report**

- 1.1** To consider the objection to the making of Wyre Borough Council Tree Preservation Order No 6 of 2018 – Land adjacent to No 57 Oldfield Carr Lane, Poulton le Fylde, FY6 8EN.

**2. Outcomes**

- 2.1** To determine whether or not to confirm the Wyre Borough Council Tree Preservation Order No 6 of 2018 – Land adjacent to No 57 Oldfield Carr Lane, Poulton le Fylde, FY6 8EN.

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 No 6 of 2018 – Land adjacent to No 57 Oldfield Carr Lane, Poulton le Fylde, FY6 8EN (“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 TPO**

- 5.1** On 17 May 2018 the Tree Officer visited the site adjacent to 57 Oldfield Carr Lane. The site has outline permission 16/00711/OUT. It was observed that initial works have been carried out relating to access and the tree protection fencing was not in place as per Condition 7 (b) (Tree Protection). The site had been scraped by mechanical means to remove topsoil. This action was not in accordance with BS5837:2012 which recommends hand digging to avoid damage to roots. On site there appeared to be much disturbed root mass.

The Tree Officer decided to undertake 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 17 May 2018 TEMPO Survey data sheet of Wyre Borough Council Tree Preservation Order No 6 of 2018, images of noted root disturbance and public visibility image are appended to this report at Appendix 2.

- 5.2** On 18 May 2018 the agent of the applicant confirmed that the site had been scraped to remove scrub vegetation and allow temporary access for a topographical survey and an updated tree report.

On 25 May 2018 the agent inspected the site with his appointed arboricultural consultant and indicated that the tree protection fencing had been erected and that no significant damage had occurred to the main trees.

On 31 May 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 28 June 2018 however after contact from the arboricultural consultant on 27 June 2018 the Tree officer agreed to an extension of the objection period until 20 July 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 by e-mail dated 19 July 2018 from the arboricultural consultant as instructed by the owner of the land.

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

Wyre Council received an e-mail in support of the TPO dated 18 June 2018 a copy of which is appended to this report at Appendix 4.

## **6. Summary of Objections and comments**

### **6.1**

- No information has been provided or indicated as being available to show how the trees have been assessed for amenity value.
- The reasons for making the order have been generically stated.
- The inclusion of the TEMPO completed survey sheet within the notification to the landowner may have prevented an objection being lodged.
- Conditions attached to extant planning permission for the site have ensured the utilisation of appropriate methodologies to ensure the future viability of the trees. Therefore it is not expedient to impose an Order.
- An alternative potentially improved scheme is now being prepared. Assurances have been given that the site would not be disturbed further, therefore the trees were not under threat.
- The approach of the Council in producing Orders is undertaken with minimal reasoning and disregards clients agreements to close sites until all issues are resolved. This could be considered as generating a lack of trust with local developers / homebuilders which will result in premature felling.
- Imposition of the TPO may be considered as inflammatory.

## **7. Response to Objections**

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

## 7.1

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 17 May 2018 which comprised an assessment in relation to the condition and suitability of the trees along with remaining trees life expectancy, public visibility, other factors and expediency.

- Notwithstanding the objection as to reasons, the objection accepts that adequate information has been provided. As shown at Appendix 2, assessment has been made of the amenity and expediency issues identified as relevant in the objection.
- The Tree Officer did not witness that appropriate methods of tree protection were being deployed on 17 May 2018. Indeed, fencing was not in place, the site had been mechanically scrapped around key trees with many roots noted as disturbed.
- It should be noted that the Part 2 Expediency Assessment of the TEMPO undertaken on 17 May 2018 attributed a precautionary placement scoring.

Officer view is that the procedural requirements of the legislation are followed in the creation of Wyre Council TPOs and determinations made using a widely accepted method which includes an expediency assessment as has occurred in this case. The issue is whether or not this particular TPO should be confirmed.

Advice pertaining to Planning Committee and its procedures along with a copy of this report relating to the TPO have been forwarded to the Consultant in reasonable advance of the meeting of Planning Committee on 5 September 2018.

### **Concluding remarks**

Officer view is that the 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 TPO protects important element of the local landscape and contributes to the local environment.

Officer view is that the TPO is fully justified and should be confirmed without modification.

<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. 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.

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

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

<b>report author</b>	<b>telephone no.</b>	<b>email</b>	<b>date</b>
Ryan Arrell	01253 887614	Ryan.Arrell@wyre.gov.uk	15 August 2018

<b>List of background papers:</b>		
<b>name of document</b>	<b>date</b>	<b>where available for inspection</b>
Wyre Council TPO 6 of 2018	31 May 2018	Room 134 or by email to Tree Officer.

## **List of Appendices**

### **Appendices:**

**1** – Wyre Council Tree Preservation Order No 6 of 2018 – Land adjacent to No 57 Oldfield Carr Lane, Poulton le Fylde, FY6 8EN plan.

**2** – 17 May 2018 completed TEMPO Survey data sheet, image showing concerns noted and also Public visibility Image of the TPO.

**3** - Copy of objection made on 19 July 2018.

**4** – Copy of 18 June 2018 e-mail of support for TPO 6 of 2018 – Land adjacent to No57 Oldfield Carr Lane, Poulton le Fylde, FY6 8EN dated 2018.

### **References List**

*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.6 of 2018

Land adjacent to No.57 Oldfield Carr Lane, Poulton-le-Fylde, FY6 8EN.



Legend	



Re produced from the Ordnance Survey map with the permission of the Controller of Her Majesty's Stationery Office © Crown Copyright 2012.

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Organisation	Wyre Council
Department	Planning Department
Comments	Not Set
Date	18 May 2018
SLA Number	100018720



# Appendix 2

## TREE EVALUATION METHOD FOR PRESERVATION ORDERS - TEMPO

### SURVEY DATA SHEET & DECISION GUIDE

Date: 17/5/18 Surveyor: R. Atwell

Tree details  
 TPO Ref (if applicable): Tree/Group No: Species: Oak  
 Owner (if known): Location: Land adj to 57 Old Field Carr Lane

REFER TO GUIDANCE NOTE FOR ALL DEFINITIONS  
 Individuals T1 and T2  
 &  
 GI comprising 3000s  
 oaks

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

Score & Notes

4

\* 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
- 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

4

#### 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

1

#### 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:

16

Decision:

Create TPO.

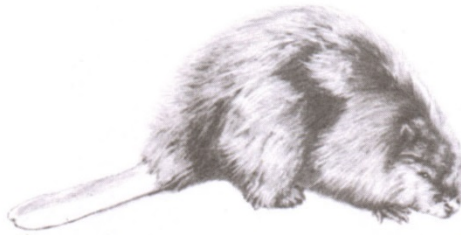


(Above image) 17 May 2018 view of the site observed from roadside at Oldfield Carr Lane. Note evidence of mechanical site scrapping, resulting in key tree disturbed root mass. Foreground displays dug out and stoned up area indicated as for temporary access.



(Above image) View of TPO 6 of 2018 when looking south west from Oldfield Carr Lane, Poulton le Fylde.

## Appendix 3



**F.Arbor.A.**

ARBORICULTURAL CONSULTANT

For the attention of Mr Ryan Arrell  
Trees and Woodland Officer  
Wyre Council  
Wyre Civic Centre  
Breck Road  
Poulton – le- Fylde  
FY6 7PU

19<sup>th</sup> July 2018

Dear Sir,

**Objection to The Wyre Council Tree Preservation Order – 006/2018/TPO – Land adjacent to Oldfield Carr Lane, Poulton-le-Fylde, FY6 8EN**

**Your Ref: Regulation 5 Notice 31<sup>st</sup> May 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.

### **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.

We have been advised that there is an extant approval for the development on the site and that the approved development may possibly encroach into the expected root protection areas of retained trees. We would presume however that appropriate conditions had been attached to any such approval to ensure that appropriate methodologies were utilised so as to ensure the future viability of the trees. As such,

the trees would be effectively protected and it is not therefore expedient to impose an Order.

Regardless of the extant permission, it is understood that Mr Arrell / Wyre Council had been advised that an alternative scheme was being prepared that would exist in an improved juxtaposition to retained trees. Also that the possibility of a preferred scheme had been discussed with Mr Arrell and it had been agreed that no further works would proceed within the site until all parties had returned from holiday / were in a position to meet up and discuss. Again therefore the trees were not under threat, our client was proceeding in a fair and reasonable manner, had given assurance that the site would not be disturbed and as such it was not expedient to impose an Order.

Effectively therefore for all such reasons it is not considered that it was expedient in the interest of amenity for the Council to make this Tree Preservation Order.

### **Other Considerations.**

Whilst the reasons for the making of the Order have been stated, this is a totally generic comment and whilst it may “tick the box” it provides no meaningful explanation to our client as to why his particular trees have had the Order imposed upon them.

The reasons for making the Order are identical to the two previous Wyre Council Orders upon which we have recently made objections and as such, simply suggests that Orders are turned out with little thought or consideration.

Such an apparent lack of detailed input, plus the fact that client's offers to sterilise the site until meetings can be held with Council Officers and agreements are achieved are simply dismissed, provides owners of trees with little comfort that they can work with the Council to obtain a reasonable development.

The simple result is that owners of trees will undertake felling / clearance at the first opportunity to avoid Orders being imposed, a totally negative situation that is of no value to amenity, conservation, pollution or the other numerous benefits that trees provide.

### **Conclusion.**

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.

The Order seeks to protect trees within an extant development which it is presumed has appropriate conditions to ensure the future health and viability of retained items.

The Client agreed to undertake no further operations on site until a meeting had been held with Council Officers to agree a way forward.

As such the trees were not under threat and it not therefore expedient for the Order to be made.

Due to the approach of the Council in producing Orders with minimal reasoning and ignoring client's agreements to close sites until all issues can be addressed, the Council could be considered to be generating a lack of trust with local developers /

homebuilders that will only result in premature felling to the detriment of the whole environment.

In the light of the foregoing comments and observations it appears that the Order is unnecessary, it is not possible from information provided to ensure that the trees have been fully or reasonably assessed and the reasoning and manor of imposition may be considered inflammatory and therefore detrimental to the local treescape.

As such it is respectfully requested that it be withdrawn.

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

**F.Arbor.A.**

## Appendix 4

**Subject:** Tree Preservation Order: TPO 006/2018/TPO Land adjacent to 57 Oldfield Carr Lane

Dear Mr Arrell

We completely support the Tree Preservation order that has been put in place for the building plot adjacent to 57 Oldfield Carr Lane.

It is my understanding, that when planning was originally granted for the 2 plots in total, a large amount of the perimeter trees ( particularly the oaks) were to remain as a condition of the permission being granted.

This was a condition, with which we were more than happy to comply as not only do the boundary trees make a big difference to the visual aesthetics of the plots , crucially they border the land drainage ditches which surround the whole of the land at 57 Oldfield Carr Lane ( including the recently sold plot) This allows surface water from the farmers fields behind the property to feed in to the ditch which then flows out under the road in front of the property to the large drainage ditch on the opposite of the private road.

Finally to remove healthy and mature trees that support local wildlife and in particular the five oak trees would be a loss not easily replaced.

With this in mind I would request that the TPO remain in place well after the 6 months initial order

Yours sincerely

Email secured by Check Point