

Report of:	Meeting	Date	Item No.
Mark Billington Service Director People and Places	Planning Committee	5 September 2018	7

Wyre Borough Council Tree Preservation Order No 8 of 2018 – Land at Brock, Bilsborrow, PR3 0RD.

1. Purpose of report

- 1.1** To consider the objection to the making of Wyre Borough Council Tree Preservation Order No 8 of 2018 – Land at Brock, Bilsborrow, PR3 0RD.

2. Outcomes

- 2.1** To determine whether or not to confirm the Wyre Borough Council Tree Preservation Order No 8 of 2018 – Land at Brock, Bilsborrow, PR3 0RD.

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 8 of 2018- Land at Brock, Bilsborrow, PR3 0RD (“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 23 May 2018 the Tree Officer visited the land east of the A6 and south of the river Brock at Bilsborrow to consider the potential impact of 18/00420/OUTMAJ on trees. The pre-development arboricultural report relating to the application recommends removal of a Sycamore tree to facilitate access, whilst an existing tree group comprising three ash trees is absent from the indicative concept plan. It was noted by the Tree Officer that the aforementioned threatened trees were of a moderate quality and provided amenity.

On 23 May 2018 the Tree Officer 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 23 May 2018 TEMPO Survey data sheet and public visibility images of G1 (Group 1) and T1 (Tree one) of Wyre Borough Council Tree Preservation Order No 8 of 2018 - Land at Brock, Bilsborrow, PR3 0RD are appended to this report at Appendix 2.

- 5.2** On 21 June 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 19 July 2018.

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

- 5.3** Wyre Council received a formal objection via e-mail to the TPO dated 19 July 2018 from an arboricultural consultant as instructed by their client.

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

6. Summary of Objections

- 6.1**
- TEMPO methodology requires that each tree or group be evaluated separately. Following correspondence with Mr Arrell, I understand this has not been carried out.
 - Wyre Council has not duly considered the amenity value of these trees and whether a TPO is expedient.
 - The consultant's evaluation of the trees indicates the group of Ash do not merit a TPO and that the Sycamore tree only just fulfils the minimum requirement for a TPO.

7. Response to Objections

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

- 7.1**
- The consultant is mistaken in his understanding as each tree and group was evaluated by the Tree Officer separately, however given that the scoring for each TEMPO part was the same the Tree Officer placed both (G1) Ash trees and (T1) Sycamore tree on the single completed survey data sheet a copy of which was forwarded to the consultant on 5 July 2018.
 - 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 23 May 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 and due to a foreseeable threat to the trees.
 - The Tree Officer disagrees with the consultants Part 1 c) Relative public visibility and suitability assessment scoring for TPO as the medium sized trees are clearly visible to the public and thus should be collectively attributed scorings of 4, not 3. The Tree Officer also disagrees with the consultants Part 2 Expediency Assessment

scoring of 1 (Precautionary only) for G1 and T1 respectively. Given that the threat to G1 ash trees and T1 sycamore tree is definitely foreseeable the Tree Officer was justified in scoring 3 for G1 and T1 respectively.

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 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.

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
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risks/implications	✓ / x
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community safety	x
equality and diversity	x
sustainability	x
health and safety	x

asset management	x
climate change	✓
data protection	x

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

List of background papers:		
name of document	date	where available for inspection
Wyre Council TPO 8 of 2018	21 June 2018	Room 134 or by email to Tree Officer.

List of Appendices

Appendices:

- 1** – Wyre Council Tree Preservation Order No 8 of 2018- plan.
- 2** –23 May 2018 completed TEMPO Survey data sheet and also Public visibility Images of (G1) group one Ash trees and (T1) tree one sycamore tree.
- 3** - Copy of objection made on 19 July 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 2

TREE EVALUATION METHOD FOR PRESERVATION ORDERS - TEMPO

SURVEY DATA SHEET & DECISION GUIDE

Date: 23/5/18 Surveyor: R. Atwell

Tree details
 TPO Ref (if applicable):
 Owner (if known):

(G1)(G1)
 Tree/Group No: 1
 Location: A6 Preston to Lancaster

(G1) Ash, (G1) Sycamore

Land to the east, and also south of Brode

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 |
| 4) Tree groups, or principal members of groups important for their cohesion |
| 3) Trees with identifiable historic, commemorative or habitat importance |
| 2) Trees of particularly good form, especially if rare or unusual |
| 1) Trees with none of the above additional redeeming features (inc. those of indifferent form) |
| -1) Trees with poor form or which are generally unsuitable for their location |

Score & Notes

1

Part 2: Expediency assessment

Trees must have accrued 10 or more points to qualify

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

Score & Notes

3

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 (defensible)



(Image above) Group1 comprising three ash trees clearly visible from the A6.



(Image above) T1 individual sycamore tree clearly visible from the A6.

Appendix 3

Treescaping Consultancy Ltd.

19 July 2018
Ref.No. AH/TPO/2018-0719

To: Wyre Council
Civic Centre
Breck Road
Poulton-le-Fylde
Lancashire
FY6 7PU

Dear Mr Ryan Arrell,

OBJECTION TO TREE PRESERVATION ORDER No.8 (2018) LAND AT BROCK, BILSBORROW

On the 21 June 2018 [] received notification from Wyre Council of their decision to serve a TPO on a group of three ash trees and a sycamore tree on land at Brock, Bilsborrow.

Objection to Tree Preservation Order

Our objection to the TPO centres around the evaluation process of whether the trees merit a TPO.

Wyre Council's Tree and Woodland Officer used the Tree Evaluation Method for Tree Preservation Orders (TEMPO). This methodology evaluates whether individuals or groups of trees warrant protection with a TPO. Each tree or group considered for inclusion in the TPO requires evaluation. The TEMPO methodology can be downloaded at www.flac.uk.com/wp-content/uploads/2014/12/TEMPO-GN.pdf (viewed 18/07/18)

The sycamore tree and the group of ash trees in the TPO require evaluating separately. Following correspondence with Mr Arrell, I understand this has not been carried out; only one evaluation for all the trees in TPO No.8 (2018) was undertaken. In the table below, I have shown my evaluation of the trees.

TPO Tree or Group No.	Tree Species	Part 1: Amenity assessment				Part 2: Expediency assessment (Score ≥10)	Part 3: Decision guide
		a) Condition & suitability for TPO	b) Retention span (in years) & suitability for TPO	c) Relative public visibility & suitability for TPO	d) Other factors (Score ≥7 – no zero)		
G1	3x Ash	3	2	3	1	1	10
T1	Sycamore	3	2	3	1	3	12

The decision guide evaluation states:

- Any 0 = do not apply TPO,
- 1 - 6 = TPO indefensible,

Treescaping Consultancy Ltd.

- 7 - 11 = Does not merit TPO,
- 12 - 15 = TPO defensible, and
- 16+ = Definitely merits TPO.

As these trees have accrued a score of 10 and 12, the decision guide for tree group G1 is 'Does not merit TPO' and for tree T1 the decision just manages to reach 'TPO defensible'.



Photo 1

Tree T1 (Sycamore) looking south. This tree is in moderate health. The ivy growing up the trunk and stems could be obscuring mechanical defects.



Photo 2

Group G1 (3x Ash) looking south. These self-seeded trees have ivy growing up the trunks that could be obscuring mechanical defects.

Conclusion

To conclude, we argue Wyre Council has not duly considered the amenity value of these trees and whether a TPO is expedient. We consider the TPO as it stands has not been correctly evaluated.

Our evaluation of the trees indicates the group of Ash trees do not merit a TPO and the Sycamore only just fulfils the minimum requirements for a TPO. This indicates these trees do not provide a significant amenity to the local landscape and so should not be a constraint to development. In order to maintain trees in the local landscape, a planting scheme could be secured as part of planning permission.

Based on this, we ask Wyre Council to revoke this temporary TPO.

Treescapes Consultancy Ltd.

Yours sincerely

