

Report of:	Meeting	Date	Item No.
Mark Billington, Service Director People and Places	Planning Committee	5 April 2017	6

Wyre Borough Council Tree Preservation Order No 3 of 2017 - Land adjacent to Berry's Lane, Poulton-le-Fylde, Lancashire
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1. Purpose of report

- 1.1 To consider an objection and determine whether to confirm the making of Wyre Borough Council Tree Preservation Order No 3 of 2017 - Land adjacent to Berry's Lane, Poulton-le-Fylde, Lancashire subject to the modifications set out in the report.

2. Outcomes

- 2.1 To determine whether to confirm the Wyre Borough Council Tree Preservation Order No3 of 2017- Land adjacent to Berry's Lane, Poulton-le-Fylde, Lancashire subject to the modifications set out in this report. 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 3 of 2017- Land adjacent to the Berry's Lane, Poulton-le-Fylde, Lancashire ("the TPO") is confirmed subject to the following modifications:

The inclusion in the TPO of a modified plan to show the overall length of Area A1 at 77.1 metres and without any cross hatching of Area A1.

The entry of the word 'None' against those categories in the Schedule to the TPO which are not used within the TPO.

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. 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 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 to confirm the order. In these cases, referral to Planning Committee is usually appropriate.

5. Background to making the TPO

- 5.1** On 15 February 2017 the Tree Officer received a report that site clearance tree work was occurring on agricultural land to the south of Berry's Lane, Poulton-le-Fylde. The Tree Officer promptly visited site on the morning of 15 February 2017 to investigate.

The Tree Officer spoke with an excavator driver who confirmed that he was working for Baxter Homes and that he had been instructed to clear the entire site of trees and hedgerow bar one oak tree which he indicated was subject to a Tree Preservation Order.

Shortly afterwards a senior representative of Baxter Homes attended site. He explained to the Tree Officer that the works were being carried out on behalf of the owner of the land with a view to aid better agricultural use of the site and potentially Baxter Homes having a future development interest. He made reference to a BS5837 Tree Survey which had been undertaken by Bowland Tree consultancy in January 2017.

He also indicated that it was intended that the remaining trees would be removed on 16 February 2017.

It was at this point that the Tree Officer communicated that work should cease whilst he assessed whether an offence had been committed under The Hedgerow Regulations 1997 and that he also needed to consider the issue of the proposed removal of the remaining trees.

- 5.2** On 15 February 2017 a tree evaluation method for preservation orders survey data sheet was completed which guided the Tree Officer to the decision that a threat to the trees was foreseeable and that the making of a tree preservation order was expedient in the interest of amenity continuity.

Copies of the completed 15 February 2017 TEMPO Survey data sheet and public visibility Images of Area A1 of Wyre Borough Council Tree Preservation Order No3 of 2017- Land adjacent to Berry's Lane, Poulton-le-Fylde, Lancashire are appended to this report at Appendix 2.

On 15 February 2017 Wyre Borough Council made the TPO. The Council served correspondence on the owners and occupiers of the land affected by the TPO, 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 15 March 2017.

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 27 February 2017 from an Arboricultural Consultant, as instructed by their client. A copy of the objection is appended to this report at Appendix 3.
- 5.4** Members' are advised that in relation to the issue of hedgerow removal the Tree Officer has now received a retrospective application for the hedgerow removal from an agent acting on behalf of the land owner. The Tree Officer is giving this matter separate consideration.

6. Summary of Objections

- 6.1**
- 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 that are in poor condition/advanced decline, of generally low value and limited potential and one item that is already protected.
 - It seeks to protect Elder which is simply a hardy shrub.
 - The extent of the Area marked in the plan covers significant sections where no trees (or shrubs) exist.
 - Area A1 when scaled equates to a length of over 100m. Measurements taken on site places the Area at 52m in length. The inclusion of the Oak tree would extend this area to some 75m (approximately) but, would also include considerable areas of cleared ground.
 - The Schedule advises that the 'Area' should be shown within a dotted black line on map. The Area shown on the map has also been cross hatched which is destroying clarity
 - Guidance also states that Authorities are advised to enter 'None' against any categories not used in the Order. Unfortunately, such guidance has not been followed.

7. Response to Objections

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

7.1 The Tree Officer completed a Tree Evaluation Method for Tree Preservation Orders (TEMPO) data sheet on 15 February 2017.

A planned and consistent process in line with Government Guidance has been followed which included:-

An assessment that was made in relation to the condition and suitability of the trees along with remaining tree life expectancy, public visibility, other factors and expediency. An expediency assessment concluded that the TPO should be made on the basis of a foreseeable identified threat to the trees.

The decision to make a TPO was guided by the TEMPO process and its outcome thus demonstrating that the reasonableness of its imposition has been fully assessed. The TPO does not seek to protect unremarkable trees of low quality.

The Tree Officer noted only one tree, a willow, within Area A1 which is in a collapsed state, but, as per species habit the willow tree is undergoing the process of natural layering and is displaying upright live shoots which will facilitate regeneration.

The said willow tree has been included within the TPO due to its potential for regrowth and also to provide a decayed wood habitat type beneficial for ecology within a low target area.

The remainder of trees within Area A1 have been observed by the Tree Officer as within moderate condition and as such do not have limited potential nor are they anticipated to have a short life expectancy. Oak tree species can live for centuries and hawthorn tree species can reach veteran status by living to a great age whereas willow species and elder species which have a moderate live expectancy live on through natural layering and suckering.

For clarification the 1no. Oak tree is not protected under a separate Tree Preservation Order.

The inclusion of Elder as a small tree within Area A1 is considered to be justified as Hilliers' Manual of Trees and Shrubs also states:

'Sambucus nigra L. Common elder. A familiar, native, large shrub or small tree.'

The Tree Officer accepts that the approximate length of the Area A1 on the plan to the TPO made in urgency on 15 February 2017 is not exact and exceeds the actual length. The correct measurement taken from the use of a precision measuring wheel on 3 March 2017 placed the overall length of Area A1 (including the 1 Oak tree) at 77.1metres.

The areas of cleared ground which are referred to in the objection include 4 hawthorn tree stumps occurring as a result of the felling of the 4no Hawthorn trees on 13 February 2017. The stumps have not been poisoned. It is commonly known that Hawthorn species react well to coppicing and as such will readily sprout regrowth from their stem bases.

As the 4 hawthorn stumps are live and will fill in the areas of cleared ground within a few years it is considered that their inclusion within Area A1 is justified.

The cross hatching and the failure to enter “None” in accordance with the Planning Practice Guidance against any categories not used within the TPO arose as a result of technical issues with the computer software. Steps have been taken to resolve these issues. It is considered that the cross hatching of the plan, the error in the area A1 shown on the plan and the failure to enter the word ‘none’ against any categories not used in the TPO in accordance with the guidance are not in the circumstances so material to cause detriment or to prevent anyone from being able to ascertain the effect of the TPO or from commenting on or objecting to the making of the TPO as the TPO gives a sufficiently clear indication of the trees to be protected. These matters can be dealt with by the recommended modifications to the TPO as set out in this report.

Concluding remarks

It is considered that the TPO is fully justified and should be confirmed subject to the following modifications :

The inclusion in the TPO of a modified plan to show the overall length of Area A1 at 77.1 metres and without any cross hatching of Area A1.

The entry of the word ‘None’ against those categories in the Schedule to the TPO which are not used within the TPO.

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 a x.

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

risks/implications	✓ / 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 March 2017

List of background papers:		
name of document	date	where available for inspection
Wyre Council TPO	15 February 2017	Room 134 or by email to Tree Officer.

List of Appendices

Appendices:

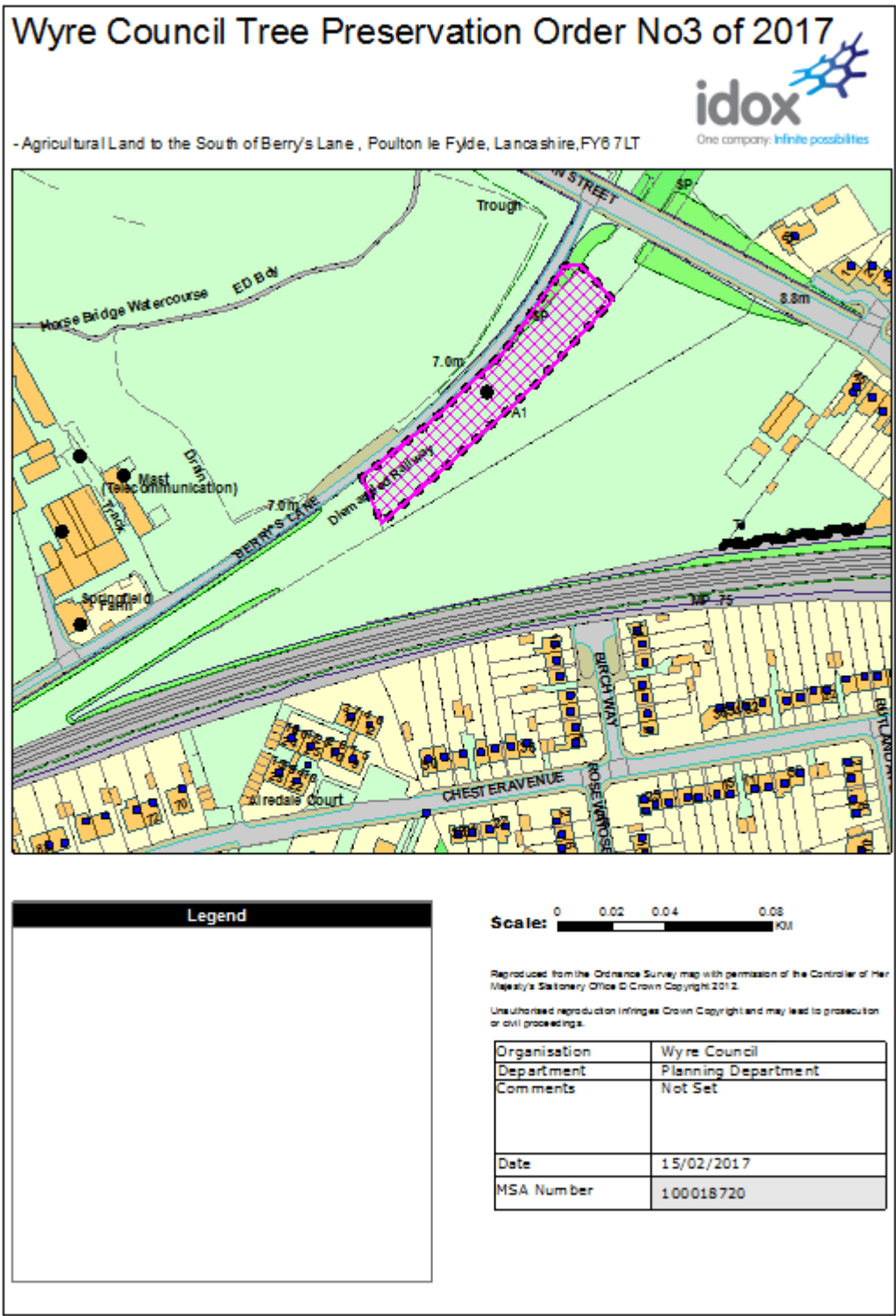
1 – Wyre Council Tree Preservation Order No No3 of 2017- Agricultural Land to the south of Berry's Lane, Poulton le Fylde, Lancashire, FY6 7LT plan.

2 – 15 February 2017 completed TEMPO Survey data sheet and also Public visibility Images of Area A1.

3 - Copy of 27 February 2017 Objection made.

arm/rg/pla/cr/17/0504ra1

Appendix 1 – Plan - Wyre Borough Council Tree Preservation Order No 3 of 2017 - land adjacent to Berry's Lane, Poulton le Fylde, Lancashire.



Appendix 2 - 15 February 2017 completed TEMPO Survey data sheets. Public visibility Images of Area A1.

TREE EVALUATION METHOD FOR PRESERVATION ORDERS - TEMPO
Survey Data Sheet & Decision Guide

Date: 15/02/17 Surveyor: [Redacted]

Tree details
 TPO Ref (if applicable): [Redacted] Tree/Group No: AREA1 Species: oak, Hawthorn, Willow, Elder
 Owner (if known): [Redacted] Location: Land to the south of Berops Lane.
 Paulton le Fyde.

Refer To Guidance Notes 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
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
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) Forseeable 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:
15

Decision:
TPO defensible
create TPO.

Photo 1.

13/02/17



Site clearance
works in progress.

Area A1

Photo 2.

13/02/17.



Area A1.

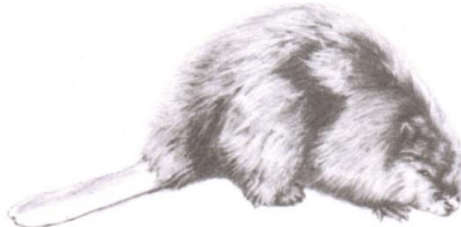
Looking west from
Tithebar Street,
Poulton le Fylde.

Photo 3.

16/02/17.



Appendix 3 – 27 February 2017 Objection made.



ARBORICULTURAL CONSULTANT

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

27th February 2017

Dear Sir,

Objection to The Wyre Council Tree Preservation Order – Land adjacent to Berry’s Lane, Poulton-le-Fylde, Lancashire. No:003/2017/TPO

Your Ref: 15th February 2017

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 the Order because it is expedient in the interest of amenity continuity.'

A survey undertaken by Bowland Tree Consultancy Limited in January of this year, completed in accordance with BS5837:2012 Trees in Relation to Design, Demolition and Construction – Recommendations, assessed the trees however as being in Category C1 – of low quality and value.

Such a broad comment within the Formal Notice and the findings from a detailed survey in accordance with BS5837 appear to create a significantly contrasting image of the 'trees.'

From my own inspection of the site I would concur with Bowland's findings in that the 'trees' are generally of a small nature, of limited potential and in some instances falling apart due to species type and possibly past management.

From these comments and observations it reasonable to conclude that in terms of amenity, there is no evidence to support that they are of value which together with the evidence of the condition of some trees suggest 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 'trees' and remnant hedgerow material was being cleared from the site at the time the Order was imposed although, as a result of the previous arboricultural survey all such material was considered as poor and as such no long term harm was envisaged.

However, neither the client nor the contractors would have objected to being requested to stop work for a period whilst the Council reviewed the material present and undertook a formal assessment as to amenity.

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

It is also reasonable to note that the single Oak within the defined Area is already protected by an existing Tree Preservation Order. It was therefore not expedient to serve an order on this item.

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

Other Considerations.

As noted previously only a single Oak exists within the defined 'Area.' To state in the schedule that 'Comprising the trees of Hawthorn, Elder, Oak and Willow species within the Area marked as A1 on the map' therefore provides a totally unrealistic and unreasonable assessment of the treescape.

It should also be noted that Elder are not normally considered as trees.

Hilliers' Manual of Trees and Shrubs states:

'Sambucus – Caprifoliaceae – 'Elder'. A small genus of generally hardy shrubs, tolerant of almost all soils and situations.'

Again therefore the description in the Schedule is both inaccurate and unreasonable.

In respect of the accuracy of the Plan attached to the Order, Area A1 when scaled utilising the Scale Bar on the Plan equates to a length of over 100m.

From my inspection and brief measurement on site the actual area of Willow, Elder and Hawthorn was only some 52m in length. The inclusion of the Oak would extend this area to some 75m (approximately) but, would also include considerable areas of cleared ground and yet again provides a totally unrealistic impression of the current treescape.

Since as discussed previously the Oak is already protected, there is no reason to extend the length of area A1 to that plotted.

Again in respect of the Plan the Schedule advises that the 'Area' should be shown within a dotted black line on map. Unfortunately, for whatever reason the Area shown on the map has also been cross hatched partially obliterating the dotted line which is destroying clarity and could cause confusion in the future.

Guidance also states that Authorities are advised to enter 'None' against any categories not used in the Order. Unfortunately, such guidance has not been followed.

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 trees that are in poor condition/advanced decline, of generally low value and limited potential and one item that is already protected.

It also seeks to protect Elder which is simply a hardy shrub.

Furthermore, the extent of the Area marked in the plan covers significant sections where no trees (or shrubs) exist.

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.

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



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