

## DECISION ITEM

REPORT OF	MEETING	DATE	ITEM NO
DEVELOPMENT SERVICES DIRECTORATE	PLANNING COMMITTEE	15 JANUARY 2020	5
<b>CONFIRMATION OF TREE PRESERVATION ORDER 2019/0005: LAND NORTH OF VILLAGE HALL AND WEST OF VICARAGE LANE, NEWTON WITH SCALES, PRESTON, PR4 3RU</b>			

### PUBLIC ITEM

This item is for consideration in the public part of the meeting.

### SUMMARY

Planning Committee are asked to confirm this Tree Preservation Order following consideration of the comments received during the consultation on the Order. The council's constitution requires that when an objection is received the decision whether to confirm the Order is to be made by the Planning Committee.

### RECOMMENDATION

That the committee confirms the Tree Preservation Order so that it becomes permanently effective. If the Order is not confirmed within six months it 'lapses', the trees will not be protected and may be felled.

### SUMMARY OF PREVIOUS DECISIONS

None

### CORPORATE PRIORITIES

Spending your money in the most efficient way to achieve excellent services ( <b>Value for Money</b> )	
Delivering the services that customers expect of an excellent council ( <b>Clean and Green</b> )	✓
Working with all partners ( <b>Vibrant Economy</b> )	
To make sure Fylde continues to be one of the most desirable places to live ( <b>A Great Place to Live</b> )	✓
Promoting Fylde as a great destination to visit ( <b>A Great Place to Visit</b> )	✓

### REPORT

#### 1. Legislative background to tree protection.

##### 1.1 Statutory Duty regarding Trees.

The Town and Country Planning Act 1990 (TCPA 1990) prescribes a "General duty of planning authorities as respects trees".

Section 197 defines a duty in respect of trees:

Planning permission to include appropriate provision for preservation and planting of trees.

*It shall be the duty of the local planning authority—*

*(a) to ensure, whenever it is appropriate, that in granting planning permission for any development adequate provision is made, by the imposition of conditions, for the preservation or planting of trees; and*

*(b) to make such orders under section 198 as appear to the authority to be necessary in connection with the grant of such permission, whether for giving effect to such conditions or otherwise.*

The council is therefore obliged by statutory legislation to consider the preservation of trees in planning applications and to use planning conditions to secure new tree planting in development.

## **1.2 Tree Preservation Orders.**

Section 198 (1) of the TCPA 1990 empowers local planning authorities to make Tree Preservation Orders, (TPOs).

*If it appears to a local planning authority that it is expedient in the interests of amenity to make provision for the preservation of trees or woodlands in their area, they may for that purpose make an order with respect to such trees, groups of trees or woodlands as may be specified in the order.*

## **1.3 Changes to TPO procedures from 6<sup>th</sup> April 2012.**

In 2012 the government introduced what it described as “a consolidated and streamlined tree preservation order system.” One of the notable changes was the removal of sections 199 and 201 of the Town and Country Planning Act. This meant that ALL tree preservation orders take immediate effect from the day the Order is made and no consultation is allowed for.

## **2. Background to making the Tree Preservation Order.**

**2.1** The order was made on 3 September 2019. It covers an area of land to the north of the Village Hall and West of Vicarage lane, Newton with Scales The land is shown on the plan attached to this report.

**2.2** The order encompasses a small pocket of mature trees that have amenity value, and which could be under potential threat from inappropriate pruning or removal of trees. In addition, if the area was clear felled, the value of the trees would be irreplaceable and any trees planted to compensate for the loss would take a significant time to grow and establish themselves to adequately replace the ones lost, be it through felling license or from pest and disease. The amenity value of the trees was assessed and as a result of that assessment, a TPO was made.

The Order was served as a ‘woodland TPO’. These are used when an area of trees has amenity value and their intention is to prevent any work to the trees covered by the order without express permission from the council. It is there to protect the trees for their entire life as well as future generations and potential tree replacement if needed for the longevity for the reasons of TPO.

## **2.3 Objection Period.**

A statutory twenty-eight-day objection period applies to new TPOs. During this period the persons notified may object to the making of the order. If they do, the objection must be considered by the council. The objection period for the order in question ran until 1<sup>st</sup> October 2019.

## **3.0 Objection.**

An objection, in the format of a statement from the Land Owner, Bowland Tree Consultancy and PWA Planning (Consultants), was received by the Council on 30<sup>th</sup> October 2019. Copies are attached in Appendix one.

Photographs from the ground and aerial photos from Google Maps to help with the visual aspect and location of the woodland and how it is integral to the landscape, are attached in Appendix two.

## **3.1 Summary of Objection.**

The objections raised to the Order may be summarised as follows:

### **Land Owner (letter in Appendix 1)**

1. Lack of consultation before issuing the Order

2. Inadequate information regarding the reason and sudden interest into why the order was placed on the area
3. Trespassing on private land and hidden agenda
4. The land is not a Woodland, National Park or Area of Natural beauty.
5. Land is too small to be classed as a woodland as per National Forest Inventory 2015
6. 50% of the borders consist buildings, car parks and a main road taking heavy traffic with increasing volumes. The other 50% is agriculture land used for live stock
7. Further felling and thinning in line with felling license is required to manage and make the site safe
8. Ash trees are being felled across the country due to disease (Ash Dieback)

#### **Bowland Tree Consultancy (letter in Appendix 2)**

9. The Forestry Commissions interest in the land
10. Reason for making the Order
11. Expediency

#### **PWA Planning (letter in Appendix 3)**

12. Wrong classification of trees on the order
13. Some trees will have little to no value in terms of amenity or in terms of supporting wildlife

### **4. Response to the objection.**

#### **1. Consultation:**

The Council is not required to consult with tree owners before serving a Tree Preservation Order. Instead, consultation is required after the order has been made, to inform the LPA's decision on whether or not to confirm it. Such consultation has taken place and is being reported here.

#### **2. Inadequate information regarding the reason and sudden interest into why the order was placed on the land:**

Fylde Borough is in an area of the country that has one of the lowest percentages of tree canopy cover, including large mature tree stock. The land in question, is a small pocket of large mature trees that provide visual amenity to local residents and visitors to the area. Because the trees are surrounded by agricultural fields with very little tree cover in the landscape, the removal of these trees would have a significant impact to the area not only visually but for the wildlife and biodiversity habitats.

When making any TPO the Local Authority (LA) assess the trees for their amenity value and what it means in practice as part of any order used to protect selected trees and woodlands. This is assessed if their removal would have significant negative impact on the local environment and its enjoyment by the public (see photos appendix 6). It is also part of the Tree and Woodland Strategy (which is in draft form) objective to be more proactive in placing preservation orders on trees within the Borough to protect tree canopy cover.

As outlined in the paragraph below, which the land owner has been referred to, the reason for making the order is in regulation 5 attached with the TPO and clearly states (Reg 5 and TPO appendix 8 & 9)

*'The Council has made this tree preservation order to ensure that the amenity and biodiversity value provided by these trees including in it is safeguarding, in the event of any future development of the site. Trees are important for visual amenity, ecology and climate change adaptation due to their size and age. Provide vital biodiversity corridor links that are crucial for the wildlife that these trees provide as habitats.'*

This section of regulation 5 was also emailed to the land owner when asked for the reason for placing the order in e-mail communication (Appendix 5 communication with land owner)

### **3. Trespassing on private land and hidden agenda:**

The Town and Country Planning Act 1990 provides rights of entry in certain circumstances for the purpose of surveying land in connection with making or confirming an Order. Officers are confident that there has been no unlawful entry onto land. In any event, the lawfulness or otherwise of entry onto the land is not relevant to the amenity value of the trees.

### **4. The land is not a Woodland, National Park or Area of Natural beauty:**

There is no need for a land covered by a TPO to be part of a National Park or designated Area of outstanding Natural beauty. As to woodland, classification as such is one of the four available categories of TPO. The Tree Officer is satisfied, having regard to guidelines set out in the National Planning Practice Guidance (NPPG) (excerpt below) that a woodland category is appropriate for this TPO.

#### ***When should the woodland category be used?***

*The woodland category's purpose is to safeguard a woodland as a whole. So it follows that, while some trees may lack individual merit, all trees within a woodland that merits protection are protected and made subject to the same provisions and exemptions. In addition, trees and saplings which grow naturally or are planted within the woodland area after the Order is made are also protected by the Order.*

*It is unlikely to be appropriate to use the woodland classification in gardens.*

*The woodland category should not hinder beneficial woodland management. Whether or not they make an Order, authorities can consider encouraging landowners to bring their woodlands into proper management under the grant schemes run by the Forestry Commission. If a woodland subject to an Order is not brought into such a scheme, authorities can still encourage applications to manage the trees in ways that would benefit the woodland without making a serious impact on local amenity, for example by making a single application for regularly repeated operations.*

*Paragraph: 028 Reference ID: 36-028-20140306*

*Revision date: 06 03 2014*

The woodland category was selected because it is completely different to the other categories in that it seeks to protect trees now and in the future, by including any trees planted from after the order was made, and does not seek to hinder any good woodland management practice.

### **5. Land is too small to be classed as a woodland as per National Forest Inventory 2015:**

The ability to make a woodland TPO is not dependent on the The National Forest Inventory definition of woodland. The pertinent guidance as to when a woodland (as opposed to individual, group or area) TPO is appropriate is in NPPG, as set out above.

### **6. 50% Of the borders consist buildings, car parks and a main road taking heavy traffic with increasing volumes. The other 50% is agriculture land used for live stock**

It is not clear what this statement is objecting to. A TPO is placed for amenity value due to the visibility of the trees to general public. This objection would suggest that the trees will be seen by increasingly more members of the public and so increase the amenity value of the trees.

## 7. Further felling and thinning in line with felling license is required to manage and make the site safe:

Tree preservation orders do not affect the tree owner's responsibilities towards tree management. Neither does it prevent the owner from actively managing the woodland. However, by requiring council consent to any operations falling within the scope of the order, it does allow the Council to control the nature and extent of tree work to prevent excessive pruning or felling.

The tree preservation order will steer tree management towards best practice so preserving visual amenity. It will also secure active and appropriate management by building in the input of the Council's Tree Officer. The land owner has also been advised that if there are any conflicts with tree work and felling license there will be input from LPA and Forestry Commission, which can only safeguard the trees amenity value.

## 8. Ash trees are being felled across the country due to disease (Ash Dieback)

Officers are conscious of Ash Dieback and the consequent need to monitor and manage ash trees and, in certain limited circumstances, remove trees at risk of failure due to poor health. Where any trees are shown to be at risk of being dangerous by a qualified arboriculturalist, a TPO would not hinder their removal. If they are imminently dangerous the LPA only requires 5 day notice. This would state the reason why and contain photographic evidence showing the potential danger. The increase in active management inherent in a TPO would also assist in reducing any potential risk.

## 9. The Forestry Commissions interest in the land:

The only suggested 'interest' of the Commission in the land is the issue of the felling license. Officers do not accept that the issue of a felling license gives the Commission an interest in the land as referred to in the NPPG.

## 10. Reason for making the Order

In their objection, Bowland Consultancy, questions the reason for making the TPO. They emphasise that safeguarding of trees "***in the event of any future development of the site***" is normally achieved through tree protection measures afforded LPA under the UK's planning system. Which uses the guidance from BS5837:2012- Trees in Relation to Design, Demolition and Construction- Recommendations.

This is recommended guidance for LPA when it comes to attaching protection conditions for any trees to be retained on development site. This is normally achieved by applying a condition to securely fence off an area to create an exclusion zone during the whole process of development. The LPA can also attach a 5-10 year maintenance condition for newly planted trees and if any fail within this period the developer is obliged to replace them.

If trees are to be retained for a long period time, then a TPO is often used by the LA and it is this Council's objective to be more proactive regarding protecting trees instead of reactively. In some cases, it can be too late to place the order on trees, as they have been felled without prior knowledge. Placing preservation orders on trees also gives the LPA powers to ask for tree replacements if any trees are removed as follows;

*"A landowner has a duty to replace a tree which is removed in contravention of a tree protection order (TPO). Where the duty is not complied with, local authorities have powers, under section 207 of the Act, to issue tree replacement notices (TRNs). These powers are also exercised where a tree is removed in a conservation area in contravention of section 211 of the 1990 Act (i.e. without giving the council six weeks' notice) and in circumstances when a condition to plant a replacement tree, on a consent to fell a tree under a TPO, is not complied with."*

Trees may only be protected by planning conditions in the event that planning permission is granted for development. In this instance there is no application for planning permission before the council for consideration

and so this option is not available. Planning conditions only become effective once a development is formally commenced (as defined by Section 56 of the Town and Country Planning Act 1990). If there is no protection for these trees, it would be impossible to place a tree replacement notice on them. If the land was to be developed and the mature trees removed, even with a landscaping plan that includes planting trees, it would take a significant amount of time before they are of any size to offset the removal of the original trees.

#### **11. Expediency**

The tree officer agrees with Bowland Tree Consultancy that the trees are under good arboriculture or silviculture management. The Government's Guidance advises that if Trees and Woodlands are under good arboriculture or silviculture management there is no need for a preservation order.

But the guidance also advises:

*'It may be expedient to make a TPO if the LPA believe there is a risk of the tree being cut down or pruned in ways which would have a significant impact on the amenity of the area. It is not necessary for the risk to be immediate. In some cases, the LPA may believe that certain trees are at risk generally from development pressures. The LPA may have some other reason to believe that trees are at risk; changes in property ownership and intentions to fell trees are not always known in advance, and so the protection of selected trees by a precautionary TPO might sometimes be considered expedient'.*

Land and property changes hands and it is not always known to the LA in advance if there is any intention to fell trees. It is understood that interest has been shown in potentially developing the site. By placing a TPO on the trees, this affords them with some protection and if good arboriculture or silviculture management is in place then a TPO should not hinder this but secure the trees for the longevity.

#### **12. Wrong classification of trees on the order**

In line with the Government's Guidance for placing a TPO on trees (See objection 4 for guidelines to determine the category) it was decided by the tree officer to place a woodland TPO. The NPPG advises:

*An Order can be used to protect individual trees, trees within an area, groups of trees or whole woodlands. Protected trees can be of [any size or species](#).*

*Orders covering a woodland protect the trees and saplings of whatever size within the identified area, including those planted or growing naturally after the Order was made. This is because the purpose of the Order is to safeguard the woodland as a whole, which depends on regeneration or new planting.*

Paragraph: 011 Reference ID: 36-011-20140306

Revision date: 06 03 2014

#### **13. Some trees have no importance and benefits:**

The objection is that there are some trees that have no importance or benefits. The NPPG advises:

*A TPO is for trees of any size provided it is in the interests of amenity to do so. The dictionary defines a tree as a perennial plant with a self-supporting woody main stem, usually developing woody branches at some distance from the ground and growing to a considerable height and size. An Order can be used to protect individual trees, trees within an area, groups of trees or whole woodlands. Protected trees can be of [any size or species](#).*

*Orders covering a woodland protect the trees and saplings of whatever size within the identified area, including those planted or growing naturally after the Order was made. This is because the purpose of the Order is to safeguard the woodland as a whole, which depends on regeneration or new planting.*

Paragraph: 011 Reference ID: 36-011-20140306

Revision date: 06 03 2014

All trees have significant importance and have several benefits in our Urban and Rural environment from;

- Amenity value
- Protecting biodiversity (which will only exist on specific species of tree)
- Filtering pollutants
- Reducing the heat island effect
- Positive impact on people's mental health
- Reducing asthma
- Economic benefits
- Improving on the hard-urban landscape

Due to the size and location of the trees they are visible from Newton Lake Fishery, Vicarage Lane Village Hall, Vicarage Lane, Church Lane and Blackpool Road A583. This location is frequently visited by people visiting the Fishery, the village hall or out and about in the area throughout the year. This increases the amenity value and their value as an asset to the area.

## **5. Conclusion.**

The trees form an integral part of the landscape and the deployment of a tree preservation order was intended as a response to protecting the borough's dwindling tree canopy cover. Every effort needs to be made in securing our mature tree stock now and for the future.

A Woodland preservation order makes this possible as it protects the trees now and any in the future from natural regeneration and including a trees planted after the order was made. If some trees do die or need to be removed because of potential safety concerns from pest, diseases or any significant damage or as part of a granted felling license by the Forestry Commission (which runs out in 2023) and there is no other protection, there is a strong possibility that the tree canopy cover for this area will be lost. Such a loss would be very hard to replace, along with the biodiversity that uses these trees as their natural habitat. Protecting and increasing tree canopy cover wherever possible should be a standard across the Fylde Borough so we can secure not only the trees now but for the future.

It is considered that it was correct to protect the trees and that the Order should be confirmed so that it can become permanent. Without confirmation, it will lapse on 3<sup>rd</sup> March 2020 and the trees will no longer be protected. A tree preservation order can only secure and, through working with the land owner, promote good management practices instead of hindering them, which a TPO is not designed to do. Up until 2023 when the felling license expires the LA and the Forestry Commission agree on working together and for the LA to take the lead on added input on tree works.

A TPO is designed to protect and doesn't prevent tree works but does allow the work to be assessed by the LA prior to any consent.

The Tree Officer agrees that in certain respects some tree work should be permitted but does not support wholesale pruning or removal. It is appropriate to control tree work at Land North of Village Hall, west side of Vicarage Lane, Newton le Scales through a tree preservation order. Working with the Forestry Commission and land owner in maintaining the area of the trees with good arboriculture practices. This can only help protect the areas assets.

Members are therefore asked to confirm the Order without modification which will provide protection to the trees pending modification of the order as set out above.

IMPLICATIONS	
Finance	There are no financial implications arising from this report
Legal	The legal implications are contained within the body of the report
Community Safety	There are no direct community safety implications arising from this report.
Human Rights and Equalities	The making of the tree preservation order that is the subject of this report has been prepared and considered in accordance with relevant legislation. There are no direct human rights and equalities implications arising from this report.
Sustainability and Environmental Impact	The provision and retention of trees is a key component in ensuring a healthy and sustainable environment and is in line with the draft Tree & Woodland Strategy for Fylde Borough.
Health & Safety and Risk Management	Potential damage from the trees that are the subject to this order is addressed in the body of the report.

LEAD AUTHOR	CONTACT DETAILS	DATE
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BACKGROUND PAPERS		
Name of document	Date	Where available for inspection
TPO 2019 No 0001		Town Hall, St Annes

#### Attached Documents

Appendix 1 - Objection letter from Land Owner

Appendix 2 – Objection letter from Bowland Tree Consultancy

Appendix 3 – Objection and supporting letter from PWA Planning

Appendix 4 - Felling licence

Appendix 5 – Email communications with land owner

Appendix 6 - Photos of the Land North of Village Hall West of Vicarage Lane. Newton Le Scales

Appendix 7 -TPO\_flowchart\_1

Appendix 8 -TPO for Land North of Village hall Newton, West of Vicarage lane

Appendix 9- Reg 5 for Land North of village hall Newton, West of Vicarage lane

Appendix 10- correspondence with Forestry Commission