

DECISION ITEM

REPORT OF	MEETING	DATE	ITEM NO
DEVELOPMENT SERVICES DIRECTORATE	PLANNING COMMITTEE	7 NOVEMBER 2018	5
FYLDE COUNCIL TREE PRESERVATION ORDER 2018.07: WHITETHORN MEWS, LYTHAM ST ANNES FY8 3XE			

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

1. 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', and the trees in protected may be felled.

SUMMARY OF PREVIOUS DECISIONS

None

CORPORATE PRIORITIES

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

REPORT

1. Legislative background to tree protection.

1.1 Statutory Duty regarding Trees.

The Town and Country Planning Act 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 6th 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 Tree Officer was notified by a resident on 20th June 2018 of an intention to hard-prune and possibly fell some of the landscaping trees around Whitethorn Mews. The amenity value of the trees was assessed and as a result of that assessment, an Area classification TPO was issued on the same day.

Area classification TPOs are intended as a stop-gap: the effect is to prevent any work to the trees until either more is known about the reality of a threat or a more refined Order can be issued that itemises the trees as individuals or groups.

The Order was served on all residents of Whitethorn Mews.

2.2 Objection Period.

A statutory twenty-eight day objection period applies to new TPOs.

All persons notified of the TPO were required to make any representations or objections before 20th July 2018.

3.0 Objection.

An objection, in the format of a statement and petition with twenty-three signatories from Whitethorn Mews was delivered by hand by the coordinator of the objection, to the Tree Officer on 15th July 2018. A copy is attached as Appendix one.

Prior to the formal objection and exchange of emails between coordinator of the objection and the Tree Officer took place. These are attached as Appendix two.

3.1 Summary of Objection.

Objection centres on five points:

1. Lack of consultation before issuing the Order;
2. Removal of individuals' responsibility to manage their own trees;
3. No threat of poor tree management exists because the residents would employ professional contractors;
4. Shading from trees to properties 18, 20, 26 and 28.
5. The threat of potential root damage to the foundations from trees six metres distant.

4. Response to the objection.

Consultation: the council is not required to consult with tree owners before serving a Tree Preservation Order. The legal provisions in section 199 of the Town and Country Planning Act 1990 that once allowed for this process – which was seldom used because it effectively ‘tipped off’ the tree owner before the TPO was made - were removed by the introduction of Statutory Instrument 605 (“ the 2012 TPO Regs”) so that all Orders are issued with immediate effect.

Removal of individuals’ responsibility to manage their trees: tree preservation orders make no effect on tree owner’s responsibilities towards tree management. The Order allows the council to control the nature and extent of tree work to prevent excessive pruning or felling. This point was explained in the email to the objection coordinator on 22nd June 2018. See Appendix two.

No threat of tree removal or excessive pruning: in essence this tenet challenges the expediency of the TPO since it claims the trees are in responsible management and no threat exists. The Tree Officer’s advice is that he had been forewarned of an intention to prune the trees and possibly remove some that were causing shading. Taken in good faith the Order was expedient. Comments later in the objection regarding excessive shading imply that tree work or removal was definitely intended.

The adjacent development has seen some extreme and unprofessional tree work that has affected the wellbeing and longevity of the trees.

Expediency however is not defined in the legislation or accompanying guidance and the deployment of pro-active tree preservation is allowed for by the legislation. . Expediency in the form of a known threat is not essential.

Responsibly administered, a tree preservation order can do no harm to the tree owner but will steer tree management towards best practice, so preserving visual amenity. It can be seen as a benefit because one outcome of a TPO is the necessary input of a council tree expert.

Shading from trees to number 18, 20, 26 and 28: The Tree Officer accepts that circumstances arise where shading of primary rooms from trees may justify pruning. As explained in his email response on 22nd June, the TPO need not outlaw all tree work but provides the council with a means to control the nature and extent of it. It is accepted that in one location three whitebeams (misidentified in the objection as hornbeams) grow in close proximity to the building. The Tree Officer’s view is that crown reductions or a possible removal of one tree might be acceptable but that the TPO is necessary to prevent wholesale felling or bad management such as “topping”, which has occurred elsewhere at this development.

Potential foundation damage from tree roots: tree roots are known to have the potential to lift lightly-loaded structures such as garden walls but current research indicates the compressive forces of a heavily-loaded structure such as a house are extremely resistant to tree roots. The Tree Officer takes his guidance on this from the Research for Amenity Trees No 8 publication “*Tree Roots in the Built Environment*” (DCLG 2006). It is considered highly unlikely that these medium-growth amenity trees will damage house foundations.

Comments about underground services and tree roots should be seen as speculative. No evidence of a problem has been submitted, and the occurrence is uncommon.

5. Conclusion.

The deployment of an Area tree preservation order was intended as a rapid response to a rumoured threat to these amenity trees. The trees themselves appear to form part of the original landscaping for Whitethorn Mews and were planted for their visual amenity. They exist to soften the built form.

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 20th December 2018 and the trees will be unprotected. Precedent for poor tree work exists in nearby Linden Mews.

The confirmed Order will require modification so that the Area classification is removed and a detailed TPO is made that breaks the trees down into individuals or groups.

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 Whitethorn Mews through a tree preservation order.

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
Mark Evans	mark.evans@fylde.gov.uk & Tel 01253 658460	October 2018

BACKGROUND PAPERS		
Name of document	Date	Where available for inspection
TPO 2018 No 7		Town Hall, St Annes

Attached Documents

Appendix 1 – Objection and petition

Appendix 2 – emails

Objection and petition. (Names redacted)

Dear Sir,

Fylde Council Tree Preservation Order 2018.07: Whitethorn Mews, Lytham St Annes, FY8 3XE.

Further to receipt of your letter, dated 20th June 2018, we note that you have put a preservation order on trees situated in Whitethorn Mews.

There has been no consultation or discussion with any of the residents, a number of whom own the trees. No consideration has been given to the feelings and opinions of the residents.

This order would mean that any responsible individual could not trim or shape their own privately owned trees. Why has a blanket order on Whitethorn Mews been made and not Linden or Holly Mews or even the Fylde? Why should Fylde Council remove individuals' responsibility?

Nobody in Whitethorn Mews has suggested cutting down any trees, we all like trees, but some trees are causing problems and require managing and everybody agrees that any work should be carried out by responsible and qualified tree surgeons.

In particular, outside numbers 18, 20, 26 and 28 there are three Hornbeam trees where the growth is taking light from these properties and the roots are showing signs of damage. Investigations should be made to identify any problems under the grass as these Hornbeam trees are capable of causing foundation damage.

These trees are approximately six metres from the property foundations and trees of this type should not have been planted this close to property as the builders associations and insurers recommend, as no doubt your tree officers will know.

There is strong evidence that the roots from these trees, which are showing through the grass, could very well be damaging the foundations and any pipes underground, close to the property.

We therefore wish the council to come and investigate these problems. We in turn will get expert advice from two qualified arborists. We look forward to your speedy visit.

The undersigned, and others, strongly object to this preservation order.

Appendix 2:

emails from 20th and 22nd June 2018. (Names/addressed redacted.)

Dear Mr Wallbank,

I am a long time resident of Whitethorn Mews, having received the notice about tree preservation, in the Mews, this is ridiculous to say they can't be loped, why on earth is that, surely anyone with any sense can see these trees do need pruning, they were never meant to get so big. I have been in the residents house, who has three trees in his garden, inside is so dark, he informs me in the morning they have to have the light on in their sitting room, surely this isn't right. At no 4 the tree needs pruning, the branches hit your car as you drive past, more so when it rains. I do not know how a tree surgeon came to look at the trees, next thing we know there's a preservation order on them. I find this quite bizarre as the council probably haven't even been in Whitethorn Mews in the years I've been here. Looking forward to your reply.

Regards

Dear Mrs.

The effect of the Tree Preservation Order is to prevent any work taking place without the council's consent. This doesn't necessarily mean that no work will be permitted, but it does mean that the nature and extent of the work will be controlled by the council so that the trees are not damaged or removed. Pruning for necessary clearance such as pedestrian and vehicular access would be consented so long as clearly specified on an application form.

The TPO was made at the requests of others who live in the Mews and who value the trees.

If you wish to make an objection to the Order please do so in writing in the format prescribed in the letter that accompanied the TPO.

Kind regards,

Alan Wallbank
Tree and Landscape Officer
Fylde Borough Council