

## DECISION ITEM

REPORT OF	MEETING	DATE	ITEM NO
HEAD OF PLANNING	PLANNING COMMITTEE	17 APRIL 2024	5
<b>CONFIRMATION OF TREE PRESERVATION ORDER TPO/24/0001 SILVER BIRCHES, ISLAY ROAD, LYTHAM ST ANNES</b>			

### PUBLIC ITEM

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

#### RELEVANT LEAD MEMBER

This item is within the remit of Lead Member for Corporate and Economic Development, Councillor Karen Buckley.

#### PURPOSE OF THE REPORT

A Tree Preservation Order TPO/23/0003 was served on trees at numbers 6 and 8 Islay Road, Lytham St Annes on 8<sup>th</sup> August 2023. An objection to the order revealed that one of the trees had a large cavity near its base which meant that it could not be protected. Therefore, the order was re-made as Tree Preservation Order TPO/24/0001 and served on 26<sup>th</sup> January 2024. As an objection had been received to the first version of the order it was decided to report that objection to Planning Committee along with the Council's response as set out in this report.

The report recommends that Tree Preservation Order TPO/24/0001 is confirmed without modification.

#### RECOVERABILITY

This decision is not recoverable because it relates to:

- A decision relating to the determining of any approval, consent, license, permission or registration.

#### RECOMMENDATION

1. That Tree Preservation Order TPO/24/0001 be confirmed without modification.

### 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". This is set out in s197 which states:

*"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, and to make orders to protect trees where it is considered appropriate to do so.

## 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.”*

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.

That immediate effect is for a period of up to 6 months, during which time the council will undertake consultation with the owners of the trees and with other interested parties. That consultation, and the assessment that follows, will inform a decision as to whether the Tree Protection Order should be ‘confirmed’ whereby it offers a permanent protection to the trees, or shall be allowed to lapse.

## 2. Background to making the Tree Preservation Order TPO/2024/0001

### Tree Preservation Order TPO/2023/0003

- 2.1. The trees that are the subject of the current TPO were first protected on 8 August 2023 under TPO/2023/0003. That Order was made as a provisional order in accordance with the regulations and so was in place for 6 months from when it was made. An objection was made to that order, including on the grounds that one of the trees proposed for protection, a silver birch (T25), had a large cavity and so should not form part of the order. Further inspection of the tree confirmed the position and so a new, modified, provisional order TPO/2024/0001 was served. This report is presented to consider the remade Order.
- 2.2. Whilst no representations have been received in response to the notification of the modified Order, officers have then taken the view that it would be appropriate to consider the representations made against the original 2023 Order as if they had been made against this 2024 Order. The remainder of this report therefore provides that consideration.

### Details Of Location of Trees

- 2.3. The trees are located within the curtilages of 6 Islay Road (Silver Birches) and 8 Islay Road (Mirasol), Lytham St Annes.
- 2.4. Group G1, is situated close to the southerly (rear) boundary of the two curtilages and extends north along the party line between them.
- 2.5. The other Group, G2, is located in the front garden of 6 Islay Road and extends along the side of Islay Road. Both groups of trees are clearly visible from Islay Road and contribute positively to the sylvan character of the area.

### Type of order

- 2.6. The trees make a substantial contribution to the amenity of the area as two separate groups. The group category should be used to protect groups of trees where the individual category would not be appropriate and the group’s overall impact and quality merits protection, as in this instance. Group G1 provides screening along the boundary between the two plots, it will also protect single storey properties at the rear (1-5 Mayfair Close) from overlooking if larger two storey replacement dwellings are built on Islay Road. Group G2 is situated along the northern boundary of Silver Birches, within the curtilage of Silver Birches but close to the side of the road. Islay Road is very sylvan in character with tree planting in verges and over hanging from gardens providing a woodland setting for the properties. This group

contributes to this sylvan character. It would screen any new dwelling from the road, softening its impact within the landscape.

#### Species

- 2.7. The larger group, G1, comprises 5 Beech, 4 Birch, 2 Holly, 1 Horse Chestnut, 5 Lime, 2 Oak, 1 Poplar and 5 Sycamore.
- 2.8. The smaller group, G2, comprises 4 Birch, 2 Holly and One Horse Chestnut. The trees are all native deciduous broadleaved trees apart from the Hollies which are evergreen.

#### Reason for Serving the Tree Preservation Order

- 2.9. At the time of the serving of the original TPO in 2023 both plots, Silver Birches and Mirasol, were subject to planning applications for the erection of dwellings under planning references 23/0348 and 23/0309 respectively. Mirasol has been demolished while Silver Birches is still in situ but the property is vacant.
- 2.10. The Tree Survey and Arboricultural Impact Assessment presented with the application for the erection of the replacement dwelling at Silver Birches recommends that fourteen trees are removed with the only reason for that being to accommodate the proposed replacement dwelling and a new access. These fourteen include all of the trees in G2, fronting Islay Road.

#### Confirmation that the trees offer good amenity value and have a long life expectancy

- 2.11. All of the trees protected by Tree Preservation Order 2024/0001 are in good condition. The poor quality specimens e.g. the Leylandii have been excluded from the order. The trees provide visual amenity and screening when viewed from Islay Road and from the rear of properties at Mayfair Close. They will also provide screening between the new dwellings built at Silver Birches and Mirasol. The trees also provide increased biodiversity, they are all native broadleaved trees. They will therefore support a diverse range of species of insects and birds. Groups of mature native broadleaved trees such as these are rare within the urban area of Lytham St Annes and should therefore be protected.

### **3. Consultation and Representations**

#### Representation Period

- 3.1. A statutory twenty-eight day objection period applies to new TPOs. All persons with an ownership interest in the trees were notified of the order and were provided with the opportunity to comment. Other potentially interested parties in the area were also invited to comment. In this case the representation period expired on 21 February 2024.

#### Representation Details

- 3.2. The council did not receive any representations to the notification of TPO/24/0001. However, as set out above, one objection was received in respect of the now lapsed TPO/23/0003 and so officers consider it is appropriate that this be assessed in this confirmation report for robustness.

#### Summary of Representation TPO 23/0003

- 3.3. This representation is from PWA Planning, who are the agents for the planning applications for dwellings on the sites, and is an objection to the first version of the Order which was referenced TPO 23/0003. The points raised in their representation are summarised as follows:
  - a) If the TPO were to be made permanent, then it could represent a barrier to any future development at this location.
  - b) The proposals currently illustrate that all of these trees (G2) are to be removed to facilitate the redevelopment of the site.
  - c) T24 is diseased which reduces its public visual amenity value.
  - d) T25 has a large open cavity at the base which renders it potentially unsafe.
  - e) T41, T42 and T43 do not warrant TPO status.

- f) T45 and T46 both show evidence of branch failures and deadwood and as such could be potentially dangerous.
- g) The proximity of a number of the existing trees to the existing property could also pose a risk in terms of hazards.
- h) The submitted Landscape Proposals provide for new specimen tree planting, shrub and hedge planting that would compensate for tree removals and enhance public visual amenity at the site.
- i) Replacing an outdated dwelling with a modern, bespoke, high-quality family home should be afforded great weight and influence the approach taken by the Council towards the protection of any trees.
- j) Development at this site, within an established residential area will help to reduce wider pressures for development elsewhere within the Fylde Borough.
- k) The value and retention of trees should be assessed through planning applications which would need to be accompanied by an AIA and TPP. This will ensure that proposed development is designed in a way that allows for the retention of most of the valued trees, while enabling access onto the site which delivers economic and social benefits. A blanket protection, as currently shown on the TPO plan could have a damaging effect on the potential for the site to deliver development.

#### Response to Representation

- 3.4. Officers have considered the points made and provide the following responses to them using the same lettering as used in the preceding section.
- a) The TPO is not a barrier to future development. The proposal includes the felling of all the trees fronting Islay Road, the Council has statutory duty to protect the trees and request that they are retained as positive aspect of the new development. The site can still be accessed via the existing access although care will have to be taken not to damage the roots of the protected trees.
  - b) Current proposals illustrate that all of these trees (G2) are to be removed to facilitate the redevelopment of the site, this is a clear indication that the trees are under threat from proposed development.
  - c) T24 is not diseased, it is being affected by an insect, Horse Chestnut Leaf Miner *Camera ohridella* which is a leaf mining moth. Affected trees can lose their leaves early each autumn, but research has shown this has little effect on the growth rate or health of the tree. T24 was reinspected on 22nd January 2024. The tree is in good health and has a dense crown of live branches with a complete covering of healthy buds.
  - d) T25 has been re-inspected and should be excluded from the order. Therefore, the Order has been amended and re-made. G2 will only comprise four Birch not five as originally listed.
  - e) T41 is a *Leylandii* and is not protected by the Tree Preservation Order. T42 and T43 do warrant TPO status, they are both Hollies and are in good condition. They provide additional visual amenity in the winter when viewed from Islay Road because they are evergreen.
  - f) T45 and T46 do have minor deadwood. Most mature trees have minor deadwood. This does not mean they are dangerous. They simply need the deadwood removing. This is allowed for by notification to the Council.
  - g) The proximity of the existing trees to the existing property is not relevant.
  - h) New planting would not replace the amenity value of the trees that are already there, it would be preferable to retain these trees and maintain them.
  - i) The replacing of one dwelling with another is only relevant because the construction of a new dwelling could cause damage to the trees and therefore a Tree Preservation Order is needed to protect them.
  - j) The replacement of one dwelling with another does not reduce development pressures in Fylde Borough.

- k) The Tree Survey Schedule for Silver Birches proposes the felling of 14 trees solely to accommodate the proposed development. The proposed development has not been designed in a way that allows for the retention of the most valued trees. Therefore, a Tree Preservation Order is required to protect the trees. This is not a blanket protection, all of the poor quality trees have been excluded from the order.

#### 4. Conclusion

- 4.1. The two groups of trees protected by Tree Preservation Order 2024/0001 make a significant contribution to the amenity of the area. They are highly visible from Islay Road as Group G2 comprises the frontage group of trees at Silver Birches. Group G1 will screen any new properties at Silver Birches and Mirasol from each other. When viewed from Mayfair Close, it is clear that the trees in Group G1 will also screen new two storey new dwellings on Islay Road from the single storey bungalows on Mayfair Close and help prevent overlooking.
- 4.2. The trees also have high biodiversity value. They are all mature, native broadleaved trees, apart from the Holly which are evergreen and will provide winter shelter and food for birds. The biodiversity of the site is already high and groups of broadleaved trees such as these are rare in the urban area of Lytham St Annes.
- 4.3. The proposed development at Silver Birches proposes the removal of all the trees in G2, therefore it is concluded that it poses a significant threat to the trees in G2. G1 is also affected by the proposals on both plots.
- 4.4. Accordingly, it is recommended that Tree Preservation Order 2024/0001 Is confirmed with no modifications.

CORPORATE PRIORITIES	
Economy – To create a vibrant and healthy economy	
Environment – To deliver services customers expect	✓
Efficiency – By spending money in the most efficient way	
Tourism – To create a great place to live and visit	✓

IMPLICATIONS	
Finance	None
Legal	The Tree Preservation Order is a legal document. The legal requirements are set out in the body of the report.
Community Safety	None
Human Rights and Equalities	None
Sustainability and Environmental Impact	The protection of trees provides many sustainability benefits and maintains the biodiversity of the area.
Health & Safety and Risk Management	None

SUMMARY OF PREVIOUS DECISIONS
None

**BACKGROUND PAPERS REVELANT TO THIS ITEM**

<b>Name of document</b>	<b>Date</b>	<b>Where available for inspection</b>
Tree Preservation Order 23/0003	2 August 2023	<a href="https://pa.fylde.gov.uk/Planning/Display/TPO/23/0003">pa.fylde.gov.uk/Planning/Display/TPO/23/0003</a>
Tree Survey and Arboricultural Impact Assessment	1 April 2023	<a href="https://pa.fylde.gov.uk/Planning/Display//23/0348">pa.fylde.gov.uk/Planning/Display//23/0348</a>
Objection PWA Planning	30 August 2023	<a href="https://pa.fylde.gov.uk/Planning/Display/TPO/23/0003">pa.fylde.gov.uk/Planning/Display/TPO/23/0003</a>
Tree Preservation Order 24/0001	26 January 2024	<a href="https://pa.fylde.gov.uk/Planning/Display/TPO/24/0001">pa.fylde.gov.uk/Planning/Display/TPO/24/0001</a>

<b>LEAD AUTHOR</b>	<b>CONTACT DETAILS</b>	<b>DATE</b>
Julie Glaister	julie.glaister@fylde.gov.uk / 01253 658687	6 March 2024

**Attached documents**

Appendix 1 - Objection to TPO 23/0003