

DECISION ITEM

REPORT OF	MEETING	DATE	ITEM NO
DEVELOPMENT SERVICES DIRECTORATE	PLANNING COMMITTEE	6 SEPTEMBER 2017	5
FYLDE COUNCIL TREE PRESERVATION ORDER 2017.07: 99 BALLAM ROAD, LYTHAM ST ANNES			

PUBLIC ITEM

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

SUMMARY

The 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.

RECOMMENDATIONS

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 cannot be made to apply.

SUMMARY OF PREVIOUS DECISIONS

Not Applicable

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 S201 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 necessary.

2. Background to making the Tree Preservation Order.

2.1

The trees came to the Tree Officer's attention as a result of planning application 17/0050, which involved demolition and complete redevelopment of the private house at 99 Ballam Road into a block of apartments. The proposal involved the loss of two of the five attractive Himalayan birches, T17 and T19 as shown in the submitted drawings. T17 was to be lost for car parking - which is an avoidable loss - and T19 to make space for the wheelie bin store. Three others were indicated for retention in the scheme and would have been retained by standard planning condition. The Tree Officer felt that T17 could be retained if special measures were adopted to protect its roots.

There was an unavoidable delay in the Tree Officer consulting with the case officer and issuing a new tree preservation order. The Tree Officer was therefore not in post for much of March and early April owing firstly to family illness and then to a bereavement.

An Order was issued on 28th April 2017, citing the reason for protection of the trees as “*to secure the visual amenity of the line of Himalayan birches that bound the property where it adjoins Lilac Avenue. The trees make a strong contribution to the locality and in light of possible redevelopment of the site it is felt they should be protected.*”

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 objection before Friday 26th May 2017.

2.2 Representations received.

The Tree Officer received three emails from residents of Lilac Avenue supporting the TPO. The first states “*The trees are beautiful and it would be a tragedy to lose them.*” A second email reads, “*I am very pleased to hear that the above trees are to be protected. I feel that all trees and mature shrub plantings are a very valuable asset to the “ Gateways’ of leafy Lytham.*”

3.0 Objection.

An objection from the developer's planning consultant was received on 19th May 2017. This is appended (App 2) for members to examine.

3.1 Summary of Objection.

The objection relies upon an argument that the Order is inappropriate because the trees within it do not satisfy the test for visual amenity. This, it is claimed, is because they are small in scale, and are growing along an unadopted road with limited outward visibility. The argument is underlined by quotes from current government guidance on making tree preservation orders. It is stated by the applicant's agent that the trees themselves are *"not considered special enough to warrant the high standards needed to justify a TPO"* and that their contribution to wider amenity is insignificant.

The objection also quotes Fylde Council's Landscape Architect's comments from a consultation on 7th February 2017 in which it was stated that the loss of trees along Lilac Avenue would not have a *"significant impact on the overall quality of Ballam Road."*

4. Response to the objection.

4.1 Government Guidance on amenity in TPOs.

Paragraph 007 Ref ID36-007-20140306 advises councils that amenity is not defined in law and judgment should be used when deciding to make an Order. It proceeds to advise that TPOs should be used if their removal would have a *"significant negative impact on the local environment and its enjoyment by the public."*

The guidance also states that councils should look at individual, collective and wider impact, but should also consider:

- Size and form of the trees
- Their *future potential* as an amenity

The Tree Officer considers that the Himalayan birches offer current visual amenity because they are visible to the residents of Lilac Avenue. This quality is evidenced by the written support from those residents of Lilac Avenue who emailed comments.

This property of visual amenity will increase as the trees continue to gain stature: greater height and canopy spread as they mature will enable better views. Himalayan birches may grow to over 12 metres, meaning they will be increasingly outwardly visible.

4.2 Himalayan birches as a species.

The species is very widely used in amenity plantings on account of its well-spaced branch structure, attractive foliage, which offers good Autumn colour, and particularly for the white bark. Some nurseries grow the tree in multiple stemmed form to capitalise on the white bark, which is considered attractive during Winter when colour is elsewhere lacking.

The Royal Horticultural Society has awarded the species its Award of Garden Merit and places the tree in its Pruning Group 1 – trees which naturally form a well-branched framework that requires little or no pruning.

These factors, recognised by the RHS, indicate that the species is particularly well-suited to providing amenity.

4.2 Development increasing the trees' amenity.

The proposal to create an apartment block would see a greater number of residents occupying the site of 99 Ballam Road, providing a larger audience for the trees and thereby raising their public visual amenity value so that not only are they a benefit to residents of Lilac Avenue but also to the new occupants of the block. They will form inherent landscaping that cannot quickly be achieved with replacement planting.

Ultimately the trees will screen and filter side views of the apartment block to users of Ballam Road and for residents on Lilac Avenue. They will reduce overlooking and improve residents' amenity.

The planning submission actually contains computer generated imagery showing the completed development in which the trees are featured as an attractive backdrop to the apartment block and are visible beyond a lowered hedge to Ballam Road. This indicates that the applicants themselves see the Himalayan birches as an asset to the

proposal and there is a contradiction between submitted documents to support the proposal and the developer's intentions for the trees.

4.3 Landscape Architect's comments used in the objection.

It should be noted that the Landscape Architect's comments date from 7th February 2017, a time when deciduous trees are bare of foliage. This may have reduced their visual appeal and could have led to their being underrated.

The comments by Mrs Lythgoe also only related to the proposed removal of three trees (one being a cherry, not included in the TPO), at the fore of the site rather than the entire line of Himalayan birches that the TPO has protected.

It seems these remarks may have been employed out of context to some degree. The photographs provided in appendix to this report attest to the quality of outward visual amenity.

5. Conclusion.

- It is clear that Himalayan birches are a species planted especially for their quality of visual amenity.
- The question of whether these trees satisfy a test for wider amenity is answered in the comments above and photographs at Appendix One support this.
- The applicants' submission demonstrated an intention to retain most of these trees, suggesting that they were seen as an asset to the site. Opposition to the TPO therefore seems illogical.
- The importance of the Himalayan birches will increase post-occupancy when they will contribute to privacy and visual amenity for new occupants as well as existing residents on Lilac Avenue.
- Planning Committee is therefore asked to confirm the Order without modification.
- The Tree Officer will modify the Order if development proceeds to remove T19 and will seek retention of T17 through the use of a root-protecting cellular confinement system to create a section of the parking area.

IMPLICATIONS	
Finance	There are no financial implications arising directly from this report.
Legal	The procedure for tree preservation orders is set out in the Town and Country Planning (Tree Preservation)(England) Regulations 2012. Under the regulations, a tree preservation order has provisional effect for six months after it is made, but then automatically lapses unless the council confirms it. The council must consider any objection before it can confirm the order.
Community Safety	None arising from this report.
Human Rights and Equalities	None arising from this report.
Sustainability and Environmental Impact	None arising from this report.
Health & Safety and Risk Management	None arising from this report.

LEAD AUTHOR	CONTACT DETAILS	DATE
Alan Wallbank	Alan.Wallbank@fylde.gov.uk	11 th August 2017

BACKGROUND PAPERS		
Name of document	Date	Where available for inspection
Report on objection to TPO 2017. 07	11 th August 2017	Fylde Council Offices.

Attached documents

Appendix 1: site photographs taken 26th May 2017

Appendix 2: objection quoted in full.

Appendix 1: trees photographed from golf club car park Friday 26th May 2017.



Appendix 2: Objection letter in full.

Dear Alan.

Town and Country Planning (Tree Preservation) (England) Regulations 2012 99 Ballam Road / Lilac Avenue

On behalf of Mr and Mrs Havenhand and Purcell Developments, I write to formally object to the provisional Tree Preservation Order (TPO) notice which was recently issued for the 5no. Himalayan birch trees at the above address. It supports the planning application at 99 Ballam Road for a new apartment development (LPA Ref. 17/0050) and concludes that the TPO is inappropriate.

The Planning Practice Guidance (PPG) states that TPO's should only be applied to protect selected trees where it is '*expedient in the interests of amenity...*' and '*...if their removal would have a significant negative impact on the local environment and its enjoyment by the public.*' When considering whether to make any formal TPO against a tree or woodland, Councils are required to take into account their amenity value, including a consideration of: the public's visibility of the trees; and their individual, collective and wider impact (in terms of their: size and form; future amenity potential; rarity; and contribution to, and relationship with, the landscape).

The Regulation 5 Notice (dated 28th April 2017) states that a TPO is deemed necessary in order to "*...secure the visual amenity of the line of Himalayan birches that bound the property where it adjoins Lilac Avenue. The trees make a strong contribution to the locality and in light of possible redevelopment of the site it is felt they should be protected.*"

We disagree that the trees make a '*strong*' contribution and believe that the Council should exercise their judgement in deeming that the trees are not worthy for TPO protection on the following grounds:

- *Visibility* – The trees are located along Lilac Avenue, a private and un-adopted residential road, and bounded by a high boundary fence which reduces their visibility to the public. The trees are also less noticeable and relatively small in scale, particularly when considered against other larger, non-TPO, specimens along Ballam Road.
- *Individual, Collective and Wider Impact* – The particular characteristics of the trees are not considered special enough to warrant the high standards needed to justify a TPO. The trees are unremarkable, offer limited landscape benefit and contribution to the local area and street scene and their individual and collective amenity impact does not warrant specific protection. The Tree Survey Report which accompanied the planning application identified that one of the Himalayan birches is a Category C1 specimen ('low' quality), with the remaining trees classed as being Category B2 ('medium / moderate' quality). The Survey confirms that none of the TPO trees warrant a Category A 'high' classification or are deemed 'good examples of their species' or have 'particular visual importance'.
- The Council's Landscape Architect has also recently considered that the trees '*have little landscape or visual value*' and '*the loss of trees along Lilac Avenue [as a result of the planning application] would not have [a] significant impact on the overall landscape quality of Ballam Road or Lilac Avenue, their character, scale or pattern. Neither would the loss of the trees materially affect the composition of the landscape or views in this area.*' The advice of the Council's own Landscape Architect, which is given in full acknowledgement and consideration of the current redevelopment proposals awaiting determination by the Council, is clearly at odds from the Council's justification for a TPO in its Regulation 5 Statement.

Conclusion

In summary, it is considered that it is not expedient to protect these trees and their overall amenity impact and quality does not merit protection via a TPO. We therefore request that these comments are carefully considered before a decision is made by the Council prior to the review of the Order at Committee and look forward to receiving your response to this letter.

Yours sincerely
Carly Hinde
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