

Appendix Two: Fylde Council Technical Response to Objection.

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, which has relevance to the objection presented here, was that 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.

2. Background to making the Tree Preservation Order.

The tree preservation order was made after the submission of an application to develop land at Moss Side Lane, Wrea Green - application 16/0619 refers. The Development Management Team issued a consultation letter to the Tree Officer requesting arboricultural advice with regard to the application and the tree survey submitted in support.

The Tree Officer made a detailed walkover of the site on 26th August 2016. Point one of his consultation response dated 30th August 2016 noted:

“The line of trees (sycamores, beech and one ash), make a strong offer to the vicinity and are worthy of TPO. These are not indicated for removal or apparently impacted by the proposal unless it emerges that proposed access impacts tree roots.”

In recognition of the trees’ visual importance and their potential functional significance as a screen to the proposed development, the Tree Officer, under delegated powers, served a tree preservation order on 30th September, 2016.

The TPO did not impact the development proposal negatively because it affected neither proposed access nor layout, and was seen by the Tree Officer as merely protecting the trees from future pressures arising from occupancy of the site post-development.

The TPO was served as a Group classification. It does not contain individual tree numbers. Those tree numbers mentioned later in this report are taken from the objector’s own arboricultural survey submitted to mount the objection, and are useful in referring to individual trees that are considered by the objector as unsuitable for TPO.

2.1 Objection Period.

Local Planning Authorities are statutorily required to allow a twenty-eight day period in which objections or representations regarding the new TPO may be made. When an objection is received, the council’s constitution require that that the decision to confirm the tree preservation order is referred to Development Management Committee

2.2 Representations received.

An objection to the TPO was received on 27th October, 2016, and took the form of a summary letter and accompanying arboricultural report. This report appears to be the original tree survey data adapted to form the basis of an objection. Items from these are directly quoted at section 3 below, and at section 4 the Tree Officer’s response to the objections is set out for members to consider.

2.3 Support for the TPO.

Written support for the tree preservation order was supplied by residents at two addresses opposite the trees. One letter states, *“We consider the trees an important part of the landscape and to lose any of the group would be detrimental .”*

3. Summary of Objections.

One tenet of the objection concerns both the timing and the absence of any negotiation with the landowner/developer before making the TPO.

More technical objections based on tree condition, defects and diseases were received in the arboricultural report.

A covering letter accompanied the report. This provided a summary of the objections, made on three grounds, which are repeated verbatim at 3.1 in italicised paragraphs a – c below. Summary objection (b) below refers to the content of the arboricultural report. It will be necessary to cite this report when responding to slightly technical arboricultural references made in it, but not each and every point has been addressed.

The arboricultural report identifies nine trees numbered T1 –T9. Paragraphs 3.2.1 to 3.2.14 of the report describe the condition of those trees and uses identified defects of differing types or severity to persuade the council that the trees should not be protected by a TPO

Since it is impractical to address individual responses to the thirteen separate paragraphs in the scope of this committee report, the council's response turns largely on the content of the summarised objections given at 3.1 below, but the arboricultural report will be cited where it is felt to be necessary, as at paragraphs 4.2 *et seq.*

3.1 Summarised objections taken from the covering letter.

a) Timing; An application for outline planning permission was lodged by Mactaggart & Mickel with Fylde Borough Council in mid-August 2016 (ref: 16/0619). This followed pre-application discussions from June 2016. The application also covers the area of the provisional TPO. With no discussion, forewarning or communication with the owner or their agents, the Council have sought to introduce this TPO, whilst the current application is still being assessed. We believe the timing of this proposal is ill-informed and a mis-guided attempt to prejudice the outcome of the assessment of the planning merits of the proposal currently being considered by Fylde Borough Council

b) Trees; The condition of these trees is variable, as evidenced in the Arboricultural Report. The majority are semi mature and with only four trees being in fair or good condition, five are in fair to poor condition. Only two trees have a life expectancy of over 40 years all others are less than this. Overall eight of the trees are categorised as C2, which are of low quality/value. Trees must meet a set of prescribed criteria to qualify for protection by a TPO, this includes having amenity value and being suitable for long term retention. Given the findings of the attached report it is argued that the long term amenity and safe retention of these trees is questionable.

c) Site; Historical land use and topographical features also bring into question the longevity of these trees. The current land use suggests that the RPAs or rooting areas of all trees within this group have been and will be impacted by ploughing of the field to the south, and the physiological condition of the trees is considered fair to poor. These findings suggest

potential root/soil issues that may be attributed to repeated root damage resulting from the ploughing of the neighbouring field.

4. Response to the main points of objection.

4.1 Objection (a) Timing:

Planning Practice Guidance does not advise Local Planning Authorities to negotiate with or notify tree owners of an intention to make a tree preservation order. If the council wishes to prevent pre-emptive felling the serving of an Order without consultation is imperative, since the alternative would place a tree owner on notice and any delay in serving might be an opportunity to rid the site of trees.

Changes to TPO legislation in 2012 resulted in all Orders being immediately effective. These are outlined below in a direct extract from government guidance:

“Under the regulations that have been replaced, there were two ways for making a tree preservation order. In the first, the order only came into force once a local planning authority had considered all objections, made any amendments and confirmed the order. Alternatively, where it appeared there was a need for the order to come into force immediately, a local authority could include a direction to that effect and, in practice, most new tree preservation orders were made in this way. The direction provided provisional protection for a period of six months and the authority concerned would have needed to confirm the order to continue that protection. The new regulations adopt one system where all new orders provide immediate provisional protection that lasts for six months and long-term protection once authorities confirm them after considering any objections or representations.”

(Main changes to the tree preservation order system in England from 6 April 2012. A consolidated and streamlined tree preservation order system DCLG, 2012)

The changes indicate that the government recognises the urgency with which it is sometimes necessary to make tree preservation orders and that it is common practice among all LPAs to issue TPOs without landowner consultation.

Current Planning Practice Guidance makes no reference to timing other than at paragraph 31, which states,

The local authority must, as soon as practicable after making an Order and before it is confirmed, serve ‘persons interested in the land affected by the Order’

The final sentence of objection (a) appears to suggest that the TPO was made to block or prejudice the application but this runs counter to the Tree Officer’s planning consultation response, in which it was stated that the trees *“are not indicated for removal or apparently impacted by the proposal”*.

In other words, at the time of making the TPO, the development proposal, including access, was not contingent of the removal of any of the trees in the Order.

The Order was viewed by the Tree Officer as uncontentious and unlikely to influence the proposal. The council's intention in preserving the trees was the twin aim of securing them as possible screening for a future development and recognising their current contribution to Moss Side Lane.

4.2 Objection (b) Trees – condition

Responding to this, it is necessary to make reference to selected items from the arboricultural report. It is impractical to address these exhaustively but the council's Tree Officer has chosen to comment on salient points to rebut the objection.

4.2.1 Sycamores.

The arboricultural report lists nine trees but only eight were included in the Order – six sycamores and two beech trees. Two sycamores in the group may have suffered livestock browsing or other physical harm. Damage to their lower stems is present and the bark has separated from the trunk. One in particular is in too advanced a decline to merit preservation. This is identified in the objector's tree report as T6. It was omitted from the TPO, but has been included in the objection in error. The second damaged sycamore was include in the TPO because it appeared, damage notwithstanding, to have a reasonable canopy of foliage and may recover if left. All six sycamores, except T6, are listed in the tree report as retainable for over twenty years.

4.2.2 Tar spot fungus.

In areas with low air pollution, (it reputedly does not tolerate sulphur dioxide), sycamore foliage is prone to tar spot fungus, *Rhytisma acerinum*. This never harms the tree and is not associated with any dysfunction, hazard or die –back. It is extremely common throughout the UK. The arboricultural report suggests this lowers the amenity value of sycamores, making them unsuited to TPO. It is the Tree Officer's view that this is a very tenuous reason to downgrade the value of the sycamores, which, despite its limitations as a species, is nonetheless an important tree in the Fylde landscape where it shows strong tolerance for the coastal climate and has to a large degree taken over from the elms that were lost to elm disease.

4.2.3. Response to observations on the two beech trees T7 and T8.

One of the trees identified in the arboricultural report as suitable for over forty years is the beech tree T7. The arboricultural report now singles out this landmark tree on account of a minor outbreak of beech bark disease and the presence of a stem bulge. Such bulges are sometimes interpreted as a symptom of internal decay or a mechanical flaw in the structure of the trunk. Neither factor is necessarily critical to the tree's wellbeing and does not constitute sufficient reason to discount it for TPO.

Beech bark disease can be a trivial infection and many trees recover from it spontaneously (Strouts and Winter, 'Diagnosis of Ill-Health in Trees', pp76). It is also, unlike most tree diseases, treatable. It does not affect the appearance of foliage or the aesthetics of the whole tree and to view it as a reason to remove a TPO is unduly pessimistic.

The occurrence of a stem bulge can be interpreted positively rather than as a reason not to retain a tree. In 'The Body Language of Trees', a standard reference text for professional arboriculturists which analyses how trees grow in ways that optimise their chances of survival, authors and biomechanics Claus Mattheck and Helga Breloer observed of the stem bulge phenomenon,

"if a tree develops a defect symptom it is signalling its will to survive. It works hard to repair a likely point of fracture. This is also a sign of vitality. It would never occur to a tree to repair itself if it were already half-dead."

(The Body Language of Trees, S8.2.3 pp 106. The Stationery Office Research for Amenity Trees series No 4)

It is not accepted therefore that a stem bulge, signals a tree with a short safe useful lifespan. It may well signify the opposite. The phenomenon is extremely common across all types of tree.

The second beech tree (T8) included in the TPO is identified as having a weak point on the lower stem where a graft union has failed to coalesce successfully. This is improbable: common beech (*Fagus sylvatica*) is not grafted. This technique is reserved for the purple beech (*Fagus sylvatica purpurea*), when it is used to ensure the trait of purple foliage is carried over. It is more likely this line on the tree trunk is an old injury, possibly from stock wire, that the tree has responded to with adaptive growth. This type of adaptive growth reinforces the tree by bracing around the suspected defect. Extra wood is added to compensate for any weakness.

4.2.4 The mature ash tree.

The tree report also questions the condition of the ash tree T9, which it describes, inappropriately, as early mature or mature. It draws attention to a large failed limb on the east side of the crown. The council's Tree Officer has inspected this tree so far as is possible – access is difficult owing to fencing and a drainage ditch.

With a stem circumference of approximately 4 metres it is likely to be a veteran tree rather than an early-mature or mature tree.

Trees accorded veteran status are described as those which are of interest biologically, aesthetically or culturally because of size, condition and age.

In light of its veteran status, the incidence of branch-shedding must be placed in time perspective: the ash is possibly two hundred years old and shows no signs of having lost other branches. The

branch loss is not recent, and we are unable to determine any clear causes of it. It may have originated in a collision with farm machinery. Decay is not evident in the branch stub so far as can be seen.

With regard to the overall state of the ash tree, when last seen in full leaf the Tree Officer did not perceive this as a tree in decline or poor vigour. The tree report does not suggest removal of the tree and recommends retention for twenty-plus years.

4.3 Objection (b) Trees – Amenity

Objection (b) proceeds to question the validity of the TPO on the grounds of amenity. In considering a new TPO, the council takes into account current Planning Practice Guidance.

4.3.1 Planning Practice Guidance

Planning Practice Guidance does not require that trees must, *“meet a set of prescribed criteria to qualify for protection by a TPO, this includes having amenity value and being suitable for long term retention”*. This assertion is therefore incorrect: no prescriptions exist other than a requirement to *consider amenity*, and long-term retention is not mentioned. It is perhaps implicit that the council’s own tree expert would not protect trees that do not offer several years’ amenity value.

LPAs are instructed at **Paragraph 9** of the Planning Practice Guidance that they should *“take into consideration what ‘amenity’ means in practice, what to take into account when assessing amenity value, what ‘expedient’ means in practice, what trees can be protected and how they can be identified”*.

Paragraph 7 assists us insofar as it allows for LPAs having to use discretion determining the vague quality that amounts to “amenity”:

‘Amenity’ is not defined in law, so authorities need to exercise judgment when deciding whether it is within their powers to make an Order.

Orders should be used to protect selected trees and woodlands if their removal would have a significant negative impact on the local environment and its enjoyment by the public. Before authorities make or confirm an Order they should be able to show that protection would bring a reasonable degree of public benefit in the present or future.

4.3.2 Amenity evaluation.

No industry-adopted set of criteria that evaluates the amenity of TPO candidates is available to local planning authorities. Amenity tree evaluation systems that “score” the tree on an amenity scale exist, but none are adopted or promoted by government and all are derived by private sector consultancies whose perspectives may not necessarily be those of a Local Planning Authority. An element of subjectivity is present in all systems. The practice is generally for an experienced tree officer to use his or her professional judgment. This involves considering:

- Size, form, species and health of the tree(s)
- Remaining lifespan
- Public visibility, both in current setting and a projected future setting post development
- Functional value of the trees, especially in light of proximate development
- Biodiversity and ecological values

The sum of these factors amounts to an informal assessment of amenity.

4.4 Objection (c) Site; land use and topographical features

4.4.1. Long-term retention.

This point of objection centres on the trees not being suitable for long-term retention owing to the likelihood of their having experienced severe root severance from the ploughshare. This contradicts the findings reported in the arboricultural report in which the trees included in the TPO were given an estimated remaining contribution to the development of between twenty and forty-plus years: the tree report and the objection it is intended to support contradict each other, since if a tree is likely to die from repeated severe root severance it is unlikely to survive for more than twenty years as a viable tree in a development.

4.4.2 Plough damage to roots.

The structural (anchoring) roots of sycamores tend to lie deep, and are unlikely to be directly affected by the ploughshare, while ‘feeder’ roots, which are thread-like and of short duration because they are quickly replaced by new feeder roots, tend to occur in the upper soil horizons. Sycamores are renowned for their tireless vigour and strong recuperative powers and can mount a recovery from root damage. The tree preservation order, because it applies to roots as well as the

aerial parts of the tree, is a tool to influence the landowner away from ploughing close to trees, allowing them a chance to recover lost roots.

Perhaps the strongest suggestion that extensive root damage is not occurring is the continued health of the two shallow-rooting beech trees, which as a species are highly intolerant of root disturbance and often decay or die back extensively if they encounter root loss. The flourishing canopies of both trees indicate an intact, healthy root system.

4.4.3 Topography.

The topography of the land immediate away (east of) from the trees is such that it slopes upward: contour lines show the centre of the field is 3.7 metres higher than the Moss Side Lane boundary. This gradual slope may have afforded tree roots protection, combined with that fact that their own canopies tends to steer the tractor away from their rooting area. Trees such as T6, which is in such poor condition that it could not be protected by TPO, are not dying because of root damage. The state of this tree is attributable to severe stem damage.

5 Conclusion

While it is accepted that trees are imperfect it is the council's opinion, based on a considered response, that they possess sufficiently high public visual amenity and contribute to the quality and character of Moss Side Lane.

The reasons given in the objection do not carry sufficient weight to remove the tree preservation order, and members are therefore asked to confirm the TPO.

