

Bath & North East Somerset Council

MEETING:	Development Control Committee
MEETING DATE:	9 May 2012
TITLE:	Tree Preservation Order: Bath and North East Somerset Council (108 Bloomfield Road, Bath No. 269) Tree Preservation Order 2012
WARD:	Lyncombe
AN OPEN PUBLIC ITEM	
List of attachments to this report: Plan of Site Copy of letter of objection to the Tree Preservation Order	

1 THE ISSUE

1.1 An objection has been received from the owners following the making of the Tree Preservation Order entitled Bath and North East Somerset Council (108 Bloomfield Road, Bath No. 269) Tree Preservation Order 2012 ("the TPO"), which was provisionally made on the 5 January 2012 to protect a Pine which makes a significant contribution to the landscape and amenity of the area.

2 RECOMMENDATION

2.1 The Development Control Committee is asked to confirm the Tree Preservation Order entitled Bath and North East Somerset Council (108 Bloomfield Road, Bath No. 269) Tree Preservation Order 2012 without modification.

3 FINANCIAL IMPLICATIONS

3.1 Financial: Under the law as it stands the owner of a tree cannot claim compensation from the Council for making a tree the subject of a tree preservation order. However if the tree is covered by a tree preservation order and the Council refuses an application to fell the tree, the owner may be able to claim compensation if he or she suffers a loss or damage as a consequence of that refusal.

3.2 Staffing: None.

3.3 Equalities: In deciding to make the TPO the provisions of the Human Rights Act 1998 have been taken into account. It is considered that Article 8 (right to respect for private and family life) and Article 1 of the First Protocol (protection of property) of the convention rights apply in this matter. Confirmation of the TPO is however, considered to be a proportionate interference in the wider public interest.

3.4 Economic: None.

3.5 Environment: The tree which is the subject of this report makes an important contribution to the landscape and amenity of the local area.

3.6 Council Wide Impacts: The confirmation of the TPO will involve officers from Legal Services and Officers from Development Control will need to take account of the tree when considering any application for development or alterations on the site which might affect the tree.

4 THE REPORT

4.1 Background

4.2 The tree which is the subject of the TPO is one mature Pine which is within the front garden of 108 Bloomfield Road and is encircled and marked T1 on the attached plan.

4.3 A notification, reference 11/05203/TCA, was received for the felling of the tree.

4.4 The tree was assessed and considered to be of sufficient visual landscape impact to be worthy of a Tree Preservation Order.

4.5 Letter of objection to the Tree Preservation Order

4.6 The Council are required to take into account all duly made objections and representations before deciding whether to confirm the TPO.

4.7 One letter of objection has been received from the tree owners. The Committee are advised to read the letter of objection attached.

4.8 The main objections are identified and summarised below.

- i) An arboriculturalist has judged the tree dangerous and that it poses an unacceptable risk.
- ii) The tree is in decline and slowly dying.

- iii) The opinions of the Arboriculturalist and Councils' Arboricultural Officer are conflicting and does not provide comfort which is not considered fair or right.
- iv) The lean of the tree, asymmetrical canopy and stumps left from previous pruning reduce the attractiveness of the tree.
- v) The tree is a Pine and not in keeping with the style of property or local environment.
- vi) The tree is close to the house and is only visible from the immediate vicinity.

4.9 The objections to the Tree Preservation Order outlined in section 4.8 above have been considered by Officers and the following comments are made:

- i) The combined independent reports provided states that the risk of stem or branch failure was considered to be within acceptable levels but the risk of the whole tree falling (this has not been qualified by the expert but based on the contents of the report would appear to relate to uprooting) was considered to be the greater risk and within unacceptable levels. The Councils' Arboricultural Officer considers that insufficient evidence has been provided to support the risk that the whole tree could fall because no trial pits were dug or roots inspected to determine whether any level changes had resulted in significant harm to the tree or whether the lapse of time following any level changes had resulted in compensatory growth. The date of any level changes is not known but based on the condition of the steps and adjacent wall it is possible that this was undertaken in excess of 10 years ago. Since the main issue raised by the combined reports relates to tree stability, a climbing inspection has not added anything further to support this.
- ii) Based on the annual extension growth and density of foliage the tree is considered to be mature rather than over-mature and life expectancy is estimated to be in excess of 20 years.
- iii) It is not the Councils' Arboricultural Officers responsibility to provide evidence or undertake an assessment of the tree but to consider what is presented to support the proposal. In this case insufficient evidence has been provided to support the risk that the whole tree could fall. The Council has not objected to previous tree pruning, references 08/04103/TCA and 11/03481/TCA, however, recent observations indicate that not all the work included within the notices has been undertaken.
- iv) The appearance of the tree and how individuals gauge attractiveness is subjective. The lean of the tree appears historical rather than recent, the unbalanced appearance of the canopy can be reduced by pruning and stubs removed.
- v) The property is within an urban setting and many unusual trees are present within Bath which would not necessarily have been available or planted at the time when properties were built. This is not considered sufficient reason to condemn a tree.
- vi) The tree is close to the house but separated by steps. No evidence has been provided to indicate that the tree is damaging the house. The tree is visible from the northern junction of Bloomfield Road, from the junction with St Lukes Road and from a distance due to the topography of Bath and height of the tree.

4.10 Relevant History

4.11 – 08/04103/TCA – Reduce long lateral branches by 2-3 meters. NO OBJECTION

4.12 11/03481/TCA - reduce the longest branches on the north and west sides in length by 2-3m, final numbers and dimensions to be agreed with the local planning authority following an aerial inspection. Description of works altered from felling following discussions. NO OBJECTION.

4.13 11/05203/TCA – Fell. OBJECTION, TPO made.

4.14 12/01698/TPO – Fell. APPLICATION RECEIVED.

5.0 LEGAL AND POLICY FRAMEWORK

Tree Preservation Order

5.1 A tree preservation order is an order made by a local planning authority in respect of trees and woodlands. The principal effect of a tree preservation order is to prohibit the:

Cutting down, uprooting, topping, lopping, wilful damage or wilful destruction of trees without the council's consent.

5.2 The law on tree preservation orders is in Part VIII of the Town and Country Planning Act 1990 and in the Town and Country Planning (Trees) Regulations 1999

5.3 A local planning authority may make a tree preservation order if it appears

“Expedient in the interests of amenity to make provision for the preservation of trees or woodlands in their area”

5.4 The Council's Arboricultural Officers have a written method for assessing the 'Amenity' of trees and woodlands considered to be under threat. This is in keeping with Government guidance, and takes account of the visual impact of the trees and their contribution to the landscape, their general overall health and condition, their longevity and their possible or likely impact on services and property.

5.5 This assessment concluded, having taken account of, visual amenity, tree health considerations and impact considerations, that it would be expedient in the interest of amenity to make provision for the preservation of the trees. The TPO was made on 15 December 2011. This took effect immediately and continues in force for a period of six months.

Planning Policy

5.6 Bath and North East Somerset Local Plan including minerals & waste policies 2007

C2.22 'Trees are an important part of our natural life support system: they have a vital role to play in the sustainability of our urban and rural areas. They benefit:

- the local economy – creating potential for employment, encouraging inward investment, bringing in tourism and adding value to property;
- the local environment by reducing the effects of air pollution and storm water run off, reducing energy consumption through moderation of the local climate, and providing a wide range of wildlife habitats;
- the social fabric in terms of recreation and education’

C2.23 ‘Much of the tree cover in the urban areas is in a critical condition and there is little or no replacement planting for over-mature trees in decline. Infill development has often reduced the space available for planting large tree species. In addition, new tree planting takes many years to mature. The management and retention of significant trees is therefore pressing’

C2.25 ‘Bath & North East Somerset has a duty under the Town and Country Planning Act 1990 to ensure tree and woodland preservation wherever it is appropriate. The Council will continue to protect trees and woodlands through Tree Preservation Orders (TPOs) as appropriate. There is also a level of protection afforded to trees in Conservation Areas (CAs). However there are many trees of value outside these designations and careful consideration should be given to the removal of any tree’

6. CONCLUSION

6.1 The tree makes a significant contribution to the landscape and amenity of this part of the Bath.

6.2 Confirmation of the TPO would ensure the retention of the tree. Should it be found in the future that it would be unreasonable to retain the tree the Council will then be able to ensure that a replacement tree is planted.

6.3 In keeping with the Council’s commitment to conserve and enhance the environment, it is recommended that the Committee confirm the TPO without modification.

Contact person	Jane Brewer 01225 477505
Background papers	The file containing the provisional Tree Preservation Order, relevant site notes, documentation and correspondence can be viewed by contacting Jane Brewer on the above telephone number.



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108 Bloomfield Road
Bath
BA2 2AR.

16 February 2012

By hand and by email

Dear Jane,

Ref: Pine Tree at 108 Bloomfield Road (TPO – No. 269)
Your Ref: 11/05203/TCA

I write formally to lodge my objection to the above Tree Preservation Order made on 4th January 2012. I wish also to request that our previous Application for Tree Works, which was lodged on 5 December 2011 be treated as an application under the TPO for felling the tree. Please let me know however if further information or documents are required from us in order for such a new application to be considered, pending resolution of the determination of the validity of the present TPO.

Before buying the above property, we had a report commissioned on the trees at the property by Brynley Andrews (a consultant arborist / arboriculturalist). This was a general report concerning all trees at the property. Following various discussions with you and with Mr Andrews, we commissioned Mr Andrews to conduct a second, more detailed, arboricultural report on the pine tree alone to obtain more information on the state of the tree and what pruning might be beneficial. The conclusions of this second report, which involved a climbing inspection by the arboriculturalist, were as follows:

- *The tree has significant but not a great value;*
- *The climbing inspection found significant structural defects that could cause the tree to collapse or its trunk to fracture at about 10m. The level of risk of harm associated with the trunk fracture has been calculated to be acceptable to impose on others, however, the level of risk of harm associated with the whole tree falling is unacceptable;*
- *Action is required to reduce the risk of the tree falling into the road; on the basis of systematic objective risk assessment this action must be undertaken within 6 months, preferably within 3 months;*
- *Options for pruning the Pine are limited by the fact that this species does not have dormant buds from which regrowth can occur and therefore crown reduction is not a realistic option. Crown thinning would need to remove so much that the tree would*

probably be killed. A combination of light reduction and thinning is feasible but arguably misguided as the tree will still have weak anchorage and the owner could be held liable when it falls;

- *Felling the Pine is therefore logical and justifiable on the basis that other options will disfigure it or at least hasten its demise. It makes more sense to concentrate efforts on cultivating the next generation of trees for this property and to concentrate these efforts on species that will not be a major nuisance or safety issue – such as Magnolia, Yew and Persian Ironwood.*

We formally applied (again) to the Council to seek permission to have the pine tree felled, which has resulted in the subject TPO. Both of Mr Andrews' reports were filed with the Application for Tree Works, which I lodged on 5 December 2011.

I wish to object to the TPO on the grounds that the tree has been judged by an independent expert as being dangerous and that it therefore poses an unacceptable health and safety risk to me, my family, my property and the public at large. It is in any case in a state of decline and is slowly dying we are told. We have been provided with no compelling evidence to the contrary to date by the Council.

You have supplied some statements of your opinion on the matter, but these give me and my wife little comfort. At best they leave us questioning which of two experts have the correct opinion on the real risk to my and my family's safety. This is not a position that I believe is fair or right. Anytime there are high winds in the area, we are now extremely concerned that the tree, or a part of it, will fall down causing significant damage to our property, to the phone lines that run very close to the tree, or worse hurt or kill someone. (If the tree were ever to fall it is difficult to imagine how it could fall without causing significant damage and disruption to us and our neighbours - it is very close to phone lines and would it seems fall onto the pavement and road outside our house).

There was talk of scientific "pull tests" being carried out by BANES and at BANES cost, which might have provided some better comfort, had the tests proved that the tree was indeed safe, but no such tests were approved or carried out. We are therefore left with an expert's opinion stating that the tree is dangerous.

We have sought our neighbours' opinions on the matter and I attach a copy of a letter that we sent to all of our immediate neighbours and those who we thought might be affected by the felling of the tree (about 10 or so in total). Of those who responded, all were supportive of our decision to apply to fell the tree.

The letter sent to us informing us of the TPO, merely stated that the tree makes a significant contribution to the local amenity and the landscape of the area. We think that the lean of the tree, the asymmetry of the tree and the stumps created by previous pruning do not make the tree particularly attractive. Also, the tree is a pine tree and not therefore in keeping with the style of our property or the local environment. It is very close to our house and appears only to be visible from the immediate vicinity (other trees and houses shield the tree when viewed from most locations).

Whilst the letter we received on the making if the TPO supplied no justification for the making of the TPO, other than a statement to the effect that the tree has significant amenity value, you kindly provided in your email of 23 January 2012 a non-exhaustive list of reasons. My comments on these are as follows:

Your comments/reason	My reply
1 Based on the information currently supplied I disagree that the tree would require felling within 10 years due to decline (under 4. Discussion) which appears to be the only reason presented for the felling of the tree in the report dated April 2011.	You simply state that you disagree, but do not provide any reasons why. This provides no comfort to us, as to the safeness and healthiness of the tree. The April 2011 was only a preliminary report too, so should be given less weight than the later October 2011 report that focussed on the Pine Tree alone.
2 The subsequent report dated October 2011 refers to 'suspected weak root plate anchorage' with no facts presented to support this. Pines often produce exudates and exhibit minor fibre buckling and bark congestion around branch unions and deadwood. Photographs of these findings with an evaluation should ideally have been included since these findings are not unusual or necessarily significant. The junction between a branch and stem will exhibit changes and differences between the orientation of the branch and stem fibres. Trees within an urban setting can not be expected to be completely free of defects.	Again, you effectively state that you disagree but again you have not provided any evidence to show that the root plate anchorage is not weak. The arboriculturist that spent a good few hours inspecting the tree has provided his opinion and his conclusions. Some of these issues appear to depend on matters of opinion at present, but why should your opinion carry more weight than My Andrews'?
3 The April and October reports are in conflict. In the April report the tree is considered ' a major arboricultural and landscape feature'. Whereas the October report downgrades the stating that it 'has significant but not a great value'. The April 2011 report suggests alternative works (please see decision 11/03481/TCA) yet the October report dismisses other options	As mentioned above, the October report focussed on the Pine tree and was commissioned to obtain more information about the options for pruning and the general health of the tree. (What would be the point of pruning the tree if it is dying and/or dangerous?) As such, the April report should be given less weight. It is not

because they would 'disfigure it or at least hasten its demise'.

surprising that a later more detailed report finds new issues to report on is it?

Lastly, we should reiterate that we would like to plant other trees in other parts of our garden, but farther from our house, in due course. If it would help the Council come to a reasonable settlement of this matter, we would be prepared to undertake to plant trees of a more manageable and appropriate kind in our garden.

I look forward to receiving your response.

Yours sincerely,

Jim Pearson
07976 618 754
jimpearson53@hotmail.com

108 Bloomfield Road
Bath
BA2 2AR

17 January 2012

Dear Neighbour,

Ref: Pine Tree at 108 Bloomfield Road

As you may know, we have sought permission from the Council to fell the large pine tree in our garden.

We moved into our house in May 2011. Before we moved in we had a report commissioned on the trees at the property (conducted by a consultant arboriculturist) and more recently we had a detailed report on the pine tree alone, as that was giving us cause for concern. That last report suggested that the pine tree was in decline and recommended that we take action to reduce the risk of the tree falling into the road within 3 to 6 months. We were advised against simply pruning the tree. We are hoping to plant other trees in other parts of our garden in the future.

The Council has now placed a temporary tree preservation order (TPO) on the tree, leaving us in a very difficult situation. We have been told by an independent expert that the tree is potentially dangerous yet the Council appear not to be giving any weight to the report we had commissioned.

We would be interested to know how you feel about this:

- Do you think that the pine tree is attractive, notable and/or of local importance?
- Would you feel adversely affected if the tree were felled?
- If "yes" to either of the above, would you nevertheless support us in our application to fell the tree in view of the safety issues raised by the arboriculturist?

Please feel free to phone, email, or send us a letter, or come round for a chat. You can also contact the Council directly if you prefer. Full details of the application we have made, including the arboriculturist reports in full, can be found at:

<http://idox.bathnes.gov.uk/WAM/showCaseFile.do?appNumber=11/05203/TCA>

Thanks and kind regards,

Jim Pearson
07976 618 754
jimpearson53@hotmail.com