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# Bath & North East Somerset Council

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## Improving People's Lives

**To: All Members of the Planning Committee**

**Bath and North East Somerset Councillors:** Matt McCabe (Chair), Sally Davis (Vice-Chair), Vic Clarke, Sue Craig, Lucy Hodge, Duncan Hounsell, Shaun Hughes, Eleanor Jackson, Hal MacFie and Manda Rigby

**Co-opted Voting Members:**

Chief Executive and other appropriate officers  
Press and Public

Dear Member

**Planning Committee: Wednesday, 23rd September, 2020**

Please find attached a **SUPPLEMENTARY AGENDA DESPATCH** of late papers which were not available at the time the agenda was published. Please treat these papers as part of the agenda.

Papers have been included for the following items:

6. **TREE PRESERVATION ORDER 2020 - LAND TO THE NORTH OF THE ORCHARD, HIGH STREET, PENSFORD NO. 3 (Pages 3 - 10)**

Yours sincerely

Marie Todd  
for Chief Executive

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<b>Bath &amp; North East Somerset Council</b>	
MEETING:	Planning Committee
MEETING DATE:	23 <sup>rd</sup> September 2020
TITLE:	Bath and North East Somerset Council ( Land To North Of The Orchard, High Street, Pensford No.3 ) Tree Preservation Order 2020
WARD:	Pensford
<b>AN OPEN PUBLIC ITEM</b>	
<b>List of attachments to this report:</b> <ol style="list-style-type: none"> <li>1. Map from Bath and North East Somerset Council ( Land To North Of The Orchard, High Street, Pensford No.3 ) Tree Preservation Order 2020</li> <li>2. Objection email</li> </ol>	

## **1.0 SUMMARY**

- 1.1 The Tree Preservation Order entitled Bath and North East Somerset Council ( Land To North Of The Orchard, High Street, Pensford No.3 ) Tree Preservation Order 2020 was made because a planning application had been received to develop the plot of land which would require the loss of the trees.
- 1.2 The group of three Sycamores implicated in the application are considered to contribute towards the visual amenity of the area being located in a prominent location and provide a pleasant buffer for the conservation area. The TPO was provisionally made on the 12<sup>th</sup> May 2020.
- 1.3 The TPO has been brought to the Planning Committee because an objection has been received from the landowner following the making of the TPO.
- 1.4 The making of the TPO has been supported by Publow and Pensford Parish Council and representations from three residents.

## **2.0 RECOMMENDATION**

- 2.1 The Planning Committee is asked to confirm the Tree Preservation Order without modification.

### **3.0 FINANCIAL IMPLICATIONS**

- 3.1 Financial: Under the law as it stands the owner of the trees cannot claim compensation from the Council for making them the subject of a tree preservation order. However if a 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 considered. 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 trees which are the subject of this report make an important contribution towards the visual amenity being in a prominent hillside location. They provide a pleasant buffer for the southern boundary of the conservation area in The High Street.
- 3.6 Council Wide Impacts: Officers from Development Management will need to take account of the Tree Preservation Order when considering any application for development or alterations on the site which might affect it.

### **4.0 THE REPORT**

#### **4.1 Background**

- 4.2 A number of emails had been received from local residents immediately on registration of a planning application to build a dwelling on the site. The application stated that no trees were on the site. The trees were growing outside of the boundary of Pensford Conservation Area so the indication was that the trees would be felled. It was subsequently confirmed by the agent that the removal of the had been delayed as a result of current circumstances around Covid-19 restrictions.
- 4.3 The trees were assessed, and it was concluded that the trees contributed towards the visual amenity and character of the area. It was therefore considered expedient to make a Tree Preservation Order.

#### **4.4 Responses to the Tree Preservation Order**

- 4.5 The Council is required to consider all duly made objections and representations before deciding whether to confirm the TPO.
- 4.6 One objection has been received to the making of the Order from the landowner so a decision on whether the TPO should be confirmed or not must therefore be made by Councillors. Committee Members are advised to read the objection email which is attached to this report.
- 4.7 Publow and Pensford Parish Council support the Tree Preservation Order.

- 4.8 The Council also received supporting comments from three residents referring to the visual contribution Of the trees towards the conservation area.
- 4.9 A summary of the objections to the TPO from the landowner are:
- i. The Tree Preservation Order places constraints on their ability to develop the land or sell the land.
  - ii. The trees dominate the area and the owner is concerned that they could fall and cause damage to an adjacent property.
  - iii. They would not be able to fell the trees if they became concerned about the health of the trees or consider that they trees are too close to a future property or if they cause property damage.
  - iv. The landowner considers that the trees are causing damage to the road and the landowner is concerned that the trees may cause future damage to retaining walls and adjacent properties.
- 4.10 The objections outlined in section 4.9 have been considered by the officer and the following comments are made:
- i. The Council offers a pre-application advice service which gives an officer opinion on whether a particular scheme is likely to receive permission or whether this land use is appropriate for the site in the first instance. The opinion is based on planning matters and other topics including ecology, drainage and flood risk, as well as trees. The service was available to the landowner prior to the purchase of the land. Local authorities make Tree Preservation Orders where in the interests of amenity it is expedient to do so, in this case it was expedient in view of the threat to the trees. Local authorities also have a duty to make Tree Preservation Orders or impose conditions to secure the preservation of trees in respect of planning applications.
  - ii. The trees are not considered to dominate but enhance the visual appearance of the locality and as such they should be notable rather than small and undistinguished. The applicant has had the trees surveyed by an independent Arboriculturalist who has identified that the structural condition of the trees is good with no defects identified to indicate that the trees are likely to fall. The felling of trees to entirely remove any possibility of tree failure is a disproportionate risk management option.
  - iii. A Tree Preservation Order does not prevent tree works or tree removals at a future date should sound arboricultural justification require the works. The proximity of the trees to any future property would be considered as part the planning process. The landowner has not provided any information to substantiate their concerns relating to property damage.
  - iv. The objector has not substantiated why they consider that the trees are causing or will cause damage. It may be noted that the nearest retaining structure to the group of Sycamores is a low section of wall down the slope 7m to the west beside Langdale, 7 The Orchard. The nearest property is to the south, Edensyde, a

recently built property which should comply with current building regulations with foundations to reflect the topography and geology.

#### **4.11 Relevant History**

- 4.12 20/01547/FUL – Erection of 3no. bed dwelling with parking - withdrawn
- 4.13 20/02420/FUL - Erection of a 3 bed dwelling with parking. (Resubmission) – pending consideration

### **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 TPOs is in the Town and Country Planning Act 1990 and in the Town and Country Planning (Tree Preservation) (England ) Regulations 2012.

- 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. This follows Government guidance, and takes account of the visual impact of 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 group of Sycamores. The new TPO was made on 12th May 2020 and took effect immediately and continues in force for a period of six months (12<sup>th</sup> November 2020).

#### Planning Policy

- 5.6 Bath and North East Somerset Placemaking Plan 2015

272. 'Trees are an important part of our natural life support system: they have a vital role to play not just in the sustainability of our urban and rural areas, but as an important component of green infrastructure networks. They benefit:

- the local economy – creating potential for employment, providing a

sustainable source of compost and biofuels and the raw materials for businesses, encouraging inward investment, bringing in tourism and adding value to property.

- the local environment - by reducing the effects of air pollution by removing sulphur dioxide, ozone, nitrogen oxides and particulates and reducing storm water run-off and soil erosion, acting as carbon sinks and producing oxygen; reducing energy consumption through moderation of the local climate by providing shelter and shade and reducing glare, reflection and wind speeds. They can provide screening and privacy or emphasize views and architecture. They provide a wide range of wildlife habitats.
- the health and wellbeing of our community – by providing shade from harmful ultra-violet radiation and improving the visual quality of our landscape and our sense of wellbeing. Studies have shown that the calming effect of trees can reduce stress levels and improve recovery time after surgery. Trees and woodlands provide opportunities for recreation and education.'

273. '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.'

274. '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.'

## **6.0 CONCLUSION**

- 6.1 The group of trees contribute towards the local visual amenity.
- 6.2 Confirmation of the TPO would help to support the retention of the trees and would ensure that their contribution is duly considered when determining any future planning applications.
- 6.3 An application supported by sound arboricultural reasons for pruning or felling as the need arose in the future can be made under the TPO. The Council will then be able to condition the quality of the workmanship or replacement planting as appropriate.
- 6.4 In keeping with the Council's commitment to conserve and enhance the environment, it is recommended that the Committee confirm the TPO without modification.

<b>Contact person</b>	Jane Brewer 01225 477505
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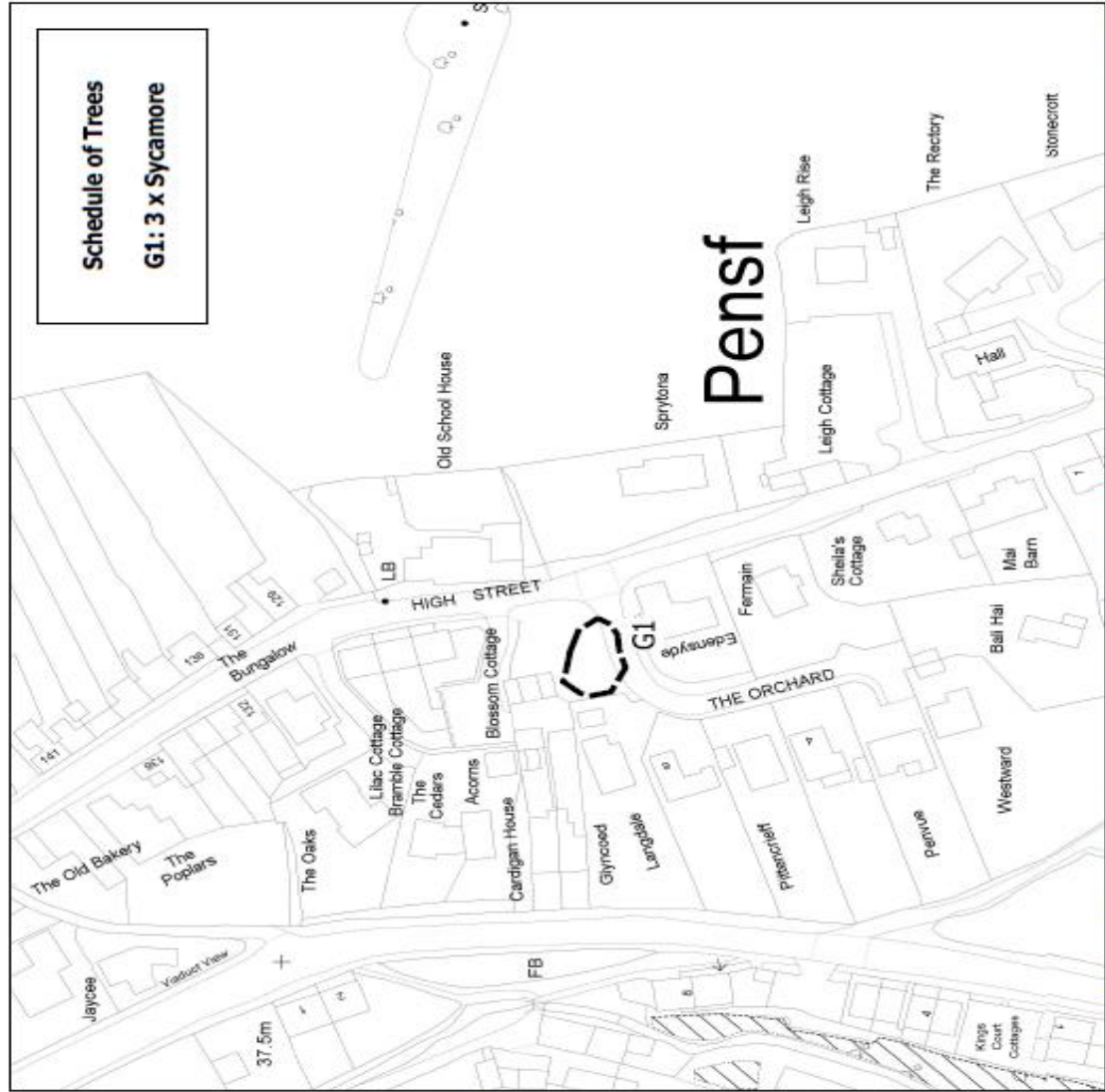
Scale 1:1250  
 Date: May 2020  
 Plan No: 537/3;  
 20/00004/TPO  
 Grid Ref: ST 620635

Title:  
 TOWN AND COUNTRY  
 PLANNING ACT 1990  
 BATH AND NORTH EAST  
 SOMERSET COUNCIL

(Land To North Of  
 The Orchard, High Street,  
 Pensford No.3 )

Tree Preservation  
 Order 2020

Paula Freeland  
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Dear Mrs Brewer

**OBJECTION TO PROPOSED TREE PRESERVATION ORDER 930 Land To North Of The Orchard, High Street. Pensford No. 3**

I am writing to formally object to proposed Tree Preservation Order. Relating to a group of 3 Sycamore trees growing within the parcel of land known as Land To North Of The Orchard, High Street. Pensford

As you will be aware, planning permission for development has been applied for on the land. Whilst consent is not guaranteed to be implemented given the current economic climate, the imposition of a TPO would cause undue constraints on our ability to develop the land or potentially sell the property as a going concern.

In accordance with procedures, the purpose of this letter is therefore to clarify which trees this objection specifically relates to and the nature of the objections.

☐ The trees in question are the group of 3 Sycamore trees growing within the parcel of land known as Land To North Of The Orchard, High Street. Pensford subject to TPO.

Our reasons for objection are as follows:

☐ The trees dominate the surrounding area – in particular The Orchard. It is located immediately adjacent to The Orchard and directly across the road a new dwelling (Edensyde) similar trees were removed to accommodate this dwelling. The trees are circa 10m high with a 6m crown spread. Two of the trees are exceptionally close to the edge of the road – indeed were they to fall there are other properties upon which the tree could land including The Orchard (road). I do not consider that a tree with so much potential to cause substantial damage to property should be protected by a Tree Preservation Order.

☐ We are concerned that by imposing a TPO we will be unable to remove the tree should we

a) become concerned as to its health (irrespective of whether the LPA concur with us or not),

b) whether we consider it is too close and overbearing to future property or

c) cause direct damage to property.

□ It is apparent that the tree roots are already causing damage to The Orchard which is a private road and if left to grow may cause damage to the retaining wall to the rear of the property adjacent to Langdale

□ As well as damage already apparent to driveways, the tree is no doubt causing unseen problems for adjacent properties both below ground level and above (branches/debris quite often fall).

For these reasons I conclude that imposing a Tree Protection order places undue hurdles in our way in determining how best to respond to the challenges imposed by the tree. We do not agree that the Council should have the last say in determining whether future potential damage is acceptable or not or indeed whether requests to prune the tree to overcome other concerns, such as the tree being deemed overbearing, should fall to the discretion of the Council.

For the reasons given above I do not consider that TPO **Land To North Of The Orchard, High Street. Pensford No. 3** should be imposed.

I look forward to acknowledgement of the above and receiving details of the Council's determination upon this matter in due course.

Yours sincerely

Mr M Clutterbuck