

Bath & North East Somerset Council

MEETING:	Development Control Committee	AGENDA ITEM NUMBER	<div></div>
MEETING DATE:	18 January 2012		
TITLE:	Tree Preservation Order: Bath and North East Somerset Council (29 Flatwoods Road, Claverton Down, Bath No. 267) Tree Preservation Order 2011		
WARD:	Combe Down		
List of attachments to this report: Plan of Site			
AN OPEN PUBLIC ITEM			

1. THE ISSUE

- 1.1 This report primarily requests the Committee to confirm, with a modification to alter the schedule to 14 Beech , the Tree Preservation Order entitled Bath and North East Somerset Council (29 Flatwoods Road, Claverton Down, Bath No. 267) Tree Preservation Order 2011 (“the TPO”), which was provisionally made on the 7 September 2011 to protect a group of trees which make a significant contribution to the landscape and amenity of the area.

2. RECOMMENDATION

- 2.1 That the Committee resolve to confirm the Tree Preservation Order entitled Bath and North East Somerset Council (29 Flatwoods Road, Claverton Down, Bath No. 267) Tree Preservation Order 2011

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 trees which are the subject of this report make 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 trees when considering any application for development or alterations on the site which might affect the trees.

4. THE REPORT

BACKGROUND

- 4.1 The trees which are the subject of the TPO are a row of 14 mature Beech growing along the northern boundary of 29 Flatwoods Road shown encircled in black and marked G1 on the attached plan.
- 4.2 A request was received from the former owner of the property for the trees to be considered for protection because the house was being sold and the former owner wished to safeguard the future of the trees.
- 4.3 The trees were assessed and was considered to be of sufficient merit to be worthy of a Tree Preservation Order.
- 4.4 The making of a Tree Preservation Order was considered expedient in view of the future change in ownership.
- 4.5 Since the making of the TPO it has been noted that the number of trees identified is in error and the Beech next to the western boundary may not have been included but remains an integral component of the row of trees.

4.5 Letters of objection to the Tree Preservation Order

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

4.6 One letter objecting to the inclusion of the tree nearest the house has been received from the new owners of the property.

4.7 The main objections are identified below.

- The proximity of the tree was considered to be damaging the roof of the property.
- The tree could potentially damage the mains drainage and septic tank.
- The crown was weighted towards the house so should the tree fail, particularly in high winds it would fall towards the house.
- The tree could shed limbs without warning.

A report from Aldous George of Up a Tree recommended removal based on it being close to the house and within striking distance. The report also stated:

- that there was possible included bark on large limbs spreading towards the house
- excavation to construct the patio may have caused damage to some roots
- Beech are shallow rooted and susceptible to wind fall

4.8 The objections to the Tree Preservation Order outlined in section 4.7 above have been considered by Officers and the following comments are made:

- The Councils Arboricultural Officers have assessed the trees for amenity value as part of the TPO process and found that the group makes an important contribution within the locality. The end tree which is the subject of the objection is in a similar condition to the remaining trees in the row.
- An application for tree surgery to the tree which is the subject of the objection has been received. The proposed works will address a number of the concerns identified in the objection letter such as the proximity of growth to the roof of the property and reduction of the canopy spread to reduce the likelihood of branch failure.
- No evidence has been provided to indicate that there is any current damage to the mains drainage and septic tank. If there are any future issues an application could be submitted for appropriate works.
- Without a TPO the tree could be managed inappropriately or felled with no due consideration. Any consent for appropriate management can include a condition to ensure that the quality of workmanship is based on current good practice. Should felling be necessary in the future then replacement planting can be conditioned.
- The report by Aldous George consists of generic comments with no details to support the likelihood of failure of individual branches or failure of the tree. The construction of the patio is not recent and no investigation has

been undertaken to determine whether significant roots were affected at the time of construction of the patio or small retaining wall.

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 the Office of the Deputy Prime Minister (formally the Department of the Environment, Transport and Regions) guidance, and takes account of the visual impact of the tree/s 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 7 September 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 which is the subject of the objection is an integral part of the row and as such contributions to the landscape and amenity of this part of Combe Down.
- 6.2 Confirmation of the TPO with a modification to 14 individuals within the group would ensure the retention of the group of trees. Should it be found in the future that it would be unreasonable to retain the individual tree, the Council will then be able to ensure that a replacement tree of a similar species is planted.
- 6.4 In keeping with the policies referred to above and the Council's commitment to conserve and enhance the environment, it is recommended that the Committee confirm the TPO without modification.
- 6.5 This report has not been sent to Trades Unions because there are no staffing implications.

Contact person	Jane Brewer – Senior Arboricultural Officer 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.