

Bath & North East Somerset Council

MEETING:	Development Control Committee
MEETING DATE:	6 th June 2012
TITLE:	Tree Preservation Order: Bath and North East Somerset Council (62 High Street, Twerton, Bath No. 270) Tree Preservation Order 2012
WARD:	Twerton
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 by the owner following the making of the Tree Preservation Order entitled Bath and North East Somerset Council (62 High Street, Twerton, Bath No. 270) Tree Preservation Order 2012 ("the TPO"), which was provisionally made on the 23 February 2012 to protect an individual Sycamore (identified as T1) which makes a contribution to the landscape and amenity of the conservation area.

2 RECOMMENDATION

2.1 The Development Control Committee is asked to confirm the Tree Preservation Order entitled Bath and North East Somerset Council (62 High Street, Twerton, Bath No. 270) 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 conservation 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 Sycamore growing within the rear garden of 62 High Street, adjacent to the railway embankment, encircled within the black line and marked T1 on the attached plan.

4.3 A planning application, reference 11/01144/OUT, was received for the erection of a dwelling which would have prejudiced the future vitality of this tree and others. The potentially adverse effect on trees was included as one of four reasons for refusal. An appeal was lodged and dismissed and the Inspector agreed with the Council with regards to the significance of the tree. Since the tree was in the Conservation Area it was provided with protection so a TPO was not considered necessary at this time.

4.4 A notification has subsequently been received for the felling of the Sycamore , reference 12/00380/TCA. The tree was assessed and considered to be of sufficient landscape merit 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 by the owner. The Committee are advised to read the letter of objection attached.

4.8 The main objections as detailed within the letter are summarised below.

- i) The owner can not see what contribution the tree makes to the area.
- ii) The owner considers that the size of the tree means that it is dangerous and states that branches fall off it regularly which have damaged a neighbouring garage roof and the owner is concerned that falling branches will cause an injury.
- iii) The tree is a Chestnut, not a Sycamore.
- iv) The only reason why this tree was not removed along with all the other trees on the railway embankment was because it was growing on the owners side of the boundary fence.

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 Councils Arboricultural Officer has assessed the tree for amenity value as part of the TPO process and found that the tree was important within the locality. The tree is visible to the general public and is in reasonable condition with an acceptable safe useful life expectancy. The Planning Inspector agreed that the tree made a significant contribution to the amenity of the area and commented that it was prominent in views from passing trains when considering the appeal relating to 11/01144/OUT.
- ii) The size of a tree does not automatically mean that the tree is dangerous. No supporting arboricultural reasons which are based on an assessment of the condition of the tree have been provided to support this statement. No supporting evidence has been provided to indicate that live and outwardly healthy branches have failed. The tree shows no apparent management other than the severance of ivy. Most trees will produce some deadwood over time which will be shed unless removed. There are no signs within the canopy that branches have failed regularly. A TPO does not prevent reasonable work but an application would be necessary unless the work was exempt. Exemptions include the removal of deadwood.
- iii) The tree is a Sycamore, there are clear distinguishing features between a 'Chestnut' (it has been assumed that this refers to a Horse Chestnut) and a Sycamore, whether in leaf or not. The species of the tree in this case has no bearing on the visual contribution which it makes.
- iv) The fact that the tree is the one of the last remaining means that its importance within the conservation area setting is greater. The ownership of the tree does not alter the amenity value.

4.10 Relevant History

4.11 10/04108/TCA – Felling of conifer – NO OBJECTION

4.12 11/01144/OUT - Erection of 1no dwelling following demolition of existing garage - REFUSED, DISMISSED ON APPEAL.

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 the Town and Country Planning Act 1990 and in the Town and Country Planning (Tree Preservation) (England) Regulations 2012 which came into effect on 6th April 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 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 tree. The TPO was made on 23 February 2012 and 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 the area.

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 appropriate replacement planting.

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.