

Bath & North East Somerset Council

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| MEETING: | Development Control Committee |
| MEETING DATE: | 26 th September 2012 |
| TITLE: | Tree Preservation Order: Bath and North East Somerset Council (1 Devonshire Place, Bath No. 271) 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 by the owner following the making of the Tree Preservation Order entitled Bath and North East Somerset Council (1 Devonshire Place, Bath No. 271) Tree Preservation Order 2012 ("the TPO"), which was provisionally made on the 3rd April 2012 to protect a Sycamore and Lawson Cypress (identified as T1 and T2 respectively) which make 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 (1 Devonshire Place, Bath No. 271) 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 trees which are the subject of this report make 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. 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

4.1 Background

4.2 The trees which are the subject of the TPO are one mature Sycamore and one mature Lawson Cypress growing within a strip of land to the rear of 1 Devonshire Place encircled within the black line and marked T1 and T2 respectively on the attached plan.

4.3 A notification, reference 12/00911/TCA, was received for the felling of both trees. The reason given in the notice was because an inspection of the surface water drainage system indicated that roots had penetrated the system.

4.4 Two requests for a Tree Preservation Order to be made on the trees were received from the owners of a neighbouring property. The trees were assessed and considered to be of sufficient landscape merit to be worthy of a Tree Preservation Order. The TPO was made to allow further discussions and allow the owner to provide further supporting information.

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 One Devonshire Place Management Company. 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 trees add nothing to the visual amenity of the area.
- ii) There is a history of drainage problems and indications are that the problems may be as a direct result of tree roots impeding the flow.

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 trees for amenity value as part of the TPO process and found that the trees were important within the locality. The trees are visible to the general public and are in reasonable condition with an acceptable safe useful life expectancy.
- ii) The owner has since provided an invoice dated 13th February 2010 for the clearance of drains which refers to the removal of tree roots. The owner has also sent an e-mail stating that since the clearance in 2010 that they have had to arrange for the drains to be cleared 'several times' since April 2011. No supporting invoices have been provided for this work. Details of drainage construction; precise location of the blockages; root identification and whether any permanent drain repair works are necessary have not been provided. The owner also indicated during a site meeting with the Arboricultural Officer that the drains may be the responsibility of Wessex Water. No further information has been provided to determine whether this is the case or not.

4.10 Relevant History

4.11 12/00911/TCA – Felling of cypress and Sycamore – OBJECTION – TPO made which is the subject of this report.

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 trees. The TPO was made on 3rd April 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 trees make a significant contribution to the landscape and amenity of the area.

6.2 Confirmation of the TPO would ensure the retention of the trees, however, should it be found in the future that it would be unreasonable to retain the trees or sufficient further information is provided to support the felling of the trees an application can be made under the TPO for their removal. The Council will then be able to condition appropriate replacement planting if considered appropriate.

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.

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| 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. |