

<b>Bath &amp; North East Somerset Council</b>	
MEETING:	Development Control Committee
MEETING DATE:	24 <sup>th</sup> October 2012
TITLE:	Tree Preservation Order: Bath and North East Somerset Council ( Hillscroft, Bull's Hill, Wellow No. 3 ) Tree Preservation Order 2012
WARD:	Wellow
<b>AN OPEN PUBLIC ITEM</b>	
<b>List of attachments to this report:</b>	
Plan of Site	
Copy of letter of objection to the Tree Preservation Order	

## 1 THE ISSUE

1.1 An objection has been received from Wildwood Tree Surgeons acting on behalf of the owner following the making of the Tree Preservation Order entitled Bath and North East Somerset Council ( Hillscroft, Bull's Hill, Wellow No. 3 ) Tree Preservation Order 2012 ("the TPO"), which was provisionally made on the 28th May 2012 to protect a Silver Birch and Poplar which are encircled in black and identified as T1 and T2 on the plan 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 ( Hillscroft, Bull's Hill, Wellow No. 3 ) 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 Silver Birch and one Poplar growing in the garden of Hillscroft and encircled in black and marked T1 and T2 on the attached plan.

4.3 Both trees were originally the subject of a notification reference 12/01892/TCA to be felled. The notification also included the felling of one Hornbeam. Wellow Parish Council voted to oppose the notification at the time.

4.4 The trees were viewed and assessed. The Poplar and Silver Birch were considered to be of sufficient landscape merit that a Tree Preservation Order should be made.

4.5 Aerial photographs indicate that the tree cover on this land within the Wellow Conservation Area has substantially reduced over a period of years since 2005. The officer is not inferring that the owner has undertaken any unauthorised work or poorly managed the trees, however, the officer does consider that the current trees contribute towards the conservation area and wishes to ensure that replacements can be secured in the future to reduce the gradual erosion of tree cover.

#### **4.6 Letter of objection to the Tree Preservation Order**

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

4.8 One letter of objection has been received from Wildwood Tree Surgeons on behalf of the owner, Kevin Jackson. The Committee are advised to read the letter of objection attached.

4.9 The Council are advised that following the making of the TPO an application, reference 12/02633/TPO, was made to fell the Poplar and to reduce the Silver Birch by 30%. Wellow Parish Council responded that it would have no objection to the application being approved following discussions with the agent.

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

- i) The Poplar leans towards the road.
- ii) Another Poplar of the same size as the current Poplar failed at the root plate approximately 5 years ago.
- iii) The waterlogged conditions will result in reduced root cohesion with the surrounding soil, and in view of the canopy size and height of the Poplar this tree is considered to pose a danger.
- iv) Pruning is not considered practical because the regrowth will develop on weak attachment points.
- v) The Poplar is of low amenity value and does not fulfil the assessment criteria of the Council's adopted written method to determine whether trees should be considered for a tree preservation order.
- vi) Silver Birch are a short lived pioneer species and the current tree is considered to have a safe useful life expectancy of 20-30 years.

4.11 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 Poplar has a slight lean towards the road ( East ), however, the objector has not stated or demonstrated that the lean is progressive or that recent basal movement has occurred. A tree stem can develop the appearance of a lean in response to the presence of neighbouring trees, for instance, to grow towards the light. Aerial photographs from 2005 indicate that there was a dense covering of trees present to the west of the tree which could have influenced the growth of the Poplar.
- ii) Details of the reasons why the adjacent Poplar failed have not been provided or substantiated and is subject to speculation. The agent did not attend the clearance of the tree. The loss of an adjacent tree is not considered sufficient justification to fell a neighbouring tree.
- iii) A small overgrown informal pond or dell is present to the immediate south of the Poplar, however this is considered to have a localised impact. No supporting information has been provided to indicate that the whole rooting area is consistently waterlogged and there were no obvious signs that this was the case during the officer's visit. The objector uses the word 'danger' in their objection to the TPO. A dead or dangerous tree is exempt for the normal six weeks notice, however, the notification did not indicate that the tree was dangerous and considered exempt by the agent at that time. If the agent was confident that the tree was a danger and could demonstrate that this was the case then they did not have to submit a notification.

- iv) The officer agrees that regrowth on Poplar following major works such as a significant crown reduction is often formed on weak attachments and extensive decay can develop following such works. Poplars which have been reduced or pollarded in the past usually require regular work to address these issues.
- v) The officer disagrees that the Poplar has low amenity value. The tree is readily visible to the general public and considers that the making of the TPO is defensible.
- vi) The Officer agrees with the comments made by the agent regarding the Silver Birch. The agent also clearly states that there are no structural weaknesses and that the tree is in good condition. The officer does not agree that felling or crown reduction is necessary or desirable, nor does the proposal follow the guidance within British Standard 3998 2010 Tree Work - Recommendations. Any pruning creates wounds which provide access for decay-causing organisms and the crown reduction referred to will adversely affect the visual appearance of the tree, destroying the natural tapering branch tracery.

#### **4.12 Relevant History**

- 4.13 10/02536/FUL – Proposed new entrance and drive including demolition of 5.5 metres of stone boundary wall – REFUSED
- 4.14 12/01892/TCA – Poplar, Hornbeam and Silver Birch – Fell – TPO MADE ON POPLAR AND SILVER BIRCH
- 4.15 12/02633/TPO – Fell Poplar, crown reduce Silver Birch by 30% – REFUSED, APPEAL PENDING IF TPO CONFIRMED.

#### **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 6<sup>th</sup> 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 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 28th May 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 contribute to the landscape and amenity of the Wellow Conservation Area and are readily visible to the general public.

6.2 Confirmation of the TPO would ensure the retention of the trees, however, an application supported by sound arboricultural reasons for pruning or felling can be made under the TPO. The Council will then be able to condition the quality of the workmanship and appropriate replacement planting if considered appropriate.

6.3 Following the making of the TPO an application under the TPO has been made to fell the Poplar and reduce the Silver Birch which has been refused. An appeal has been lodged but is currently on hold until a decision has been made with regards to the TPO.

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
<b>Background papers</b>	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.