

Bath & North East Somerset Council

MEETING:	Development Control Committee
MEETING DATE:	24 th October 2012
TITLE:	Tree Preservation Order: Bath and North East Somerset Council (35 West Hill Gardens, Radstock No. 29) Tree Preservation Order 2012
WARD:	Radstock
AN OPEN PUBLIC ITEM	
List of attachments to this report: Plan of Site Copy of letters of objections to the Tree Preservation Order	

1 THE ISSUE

1.1 Two objections have been received from two neighbours following the making of the Tree Preservation Order entitled Bath and North East Somerset Council (35 West Hill Gardens, Radstock No. 29) Tree Preservation Order 2012 ("the TPO"), which was provisionally made on the 2nd May 2012 to protect a Sycamore (identified as T1 on the plan) 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 (35 West Hill Gardens, Radstock No. 29) 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. 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 close to the front boundary wall of 35 West Hill Gardens encircled in black and marked T1 on the attached plan.

4.3 An application, reference 12/00808/TPO, was received for the felling of the tree. The reason given in the application was because the tree was pushing out the boundary wall into the road and that to rebuild the wall significant root damage would be caused as to require the felling of the tree.

4.4 The tree was viewed and assessed and considered to be of sufficient landscape merit that alternative methods should be considered to reduce any risk with regards to the condition of the wall. For instance, since the wall did not function as a retaining structure, a section could be removed and the gap bridged without the need to sever roots or fell the tree.

4.5 Further investigation relating to the status of the original TPO was undertaken following an enquiry from the applicant. The original Tree Preservation Order was entitled Wansdyke District Council (Norton-Radstock No.4) Tree Preservation Order 1986 which was made on 3rd October 1986. No written evidence was found to support a record of a confirmation date of 28th February 1987. This meant that the original TPO was considered unenforceable so the new TPO was made which is the subject of this report.

4.6 Westfield Parish Council provided a response of no objection to the Tree Preservation Order.

4.7 Letter of objection to the Tree Preservation Order

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

4.9 Two letters of objection have been received from 33 West Hill Gardens and 34 West Hill Gardens which are located on the opposite side of the road. The Committee are advised to read the letters of objection attached.

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

- i) The tree is a cause of concern and fear during high winds because it would cause considerable damage or worse if it were to fall.
- ii) The leaves and other debris fall onto neighbouring properties and block gutters and down pipes and result in the development of numerous seedlings.
- iii) The tree is in the wrong place and should at least be pruned.
- iv) The canopy and roots are encroaching on neighbour's properties.
- v) The tree blocks light reaching rooms and shades front gardens when in leaf restricting the types of plants which can be planted.

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) A tree owner has a duty of care and should ensure that their trees are regularly checked by a suitably qualified and experienced person. The Council would support an application for appropriate pruning operations which are based on sound arboricultural reasons.
- ii) The natural shedding of seasonal debris is insufficient reason to fell a tree and sets an unsustainable precedent if this reason were supported by the Council.
- iii) The tree is not considered to be in the wrong location and is set in a generous front garden. The trunk is approximately 12 meters from the front elevation of 35 West Hill Gardens and approximately 22 meters from the nearest elevation of the properties opposite. The Council would support an application for appropriate pruning operations.
- iv) The root growth towards the properties opposite will be considerably influenced by the presence of the road which would provide unfavourable conditions for roots to flourish. No evidence to support root encroachment has been provided. Growth was noted to extend across the road but, with the exception of minor growth from the lower canopy, none overhung the front garden of the properties opposite.
- v) The tree is located to the west of 33 and 34 West Hill Gardens and it is accepted that shading of front gardens and front rooms will occur at particular times of the day and year. The severity of shading can be reduced by pruning without felling the tree.

4.12 Relevant History

4.13 12/00808/TPO – Felling of 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 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 2nd 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 tree makes a significant contribution to the landscape and amenity of the area and is readily visible to the general public.
- 6.2 Confirmation of the TPO would ensure the retention of the tree, however, should it be found in the future that it would be unreasonable to retain the tree an application can be made under the TPO for felling. 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.

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.