

Bath & North East Somerset Council

MEETING:	Development Control Committee
MEETING DATE:	16 th January 2013
TITLE:	Tree Preservation Order: Bath and North East Somerset Council (35 West Hill Gardens, Radstock No. 29A) Tree Preservation Order 2012
WARD:	Westfield
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 one neighbour and the owner following the making of the Tree Preservation Order entitled Bath and North East Somerset Council (35 West Hill Gardens, Radstock No. 29A) Tree Preservation Order 2012 ("the TPO"), which was provisionally made on the 31st October 2012 to protect a Sycamore (identified as T1 on the plan) which makes a contribution to the landscape and amenity of the conservation area.

Development Control Committee originally considered the Tree Preservation Order Bath and North East Somerset Council (35 West Hill Gardens, Radstock No. 29) Tree Preservation Order 2012 on 24th October 2012 and carried out a site inspection on 12th November 2012. The original TPO could not be determined before the time limit required to make a decision on the TPO expired. A new TPO was subsequently made which is the TPO under consideration at this Committee.

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. 29A) 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 significant root damage would be caused to enable the wall to be rebuilt.

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 a new TPO was made.

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 objections have been received; from the owner of the tree at 35 West Hill Gardens and 34 West Hill Gardens which is located on the opposite side of the road. The Committee are advised to read the objections attached.

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

- i) The stability of the tree in high winds is a cause of concern.
- ii) The leaves and other debris fall onto neighbouring properties blocking gutters and drains.
- iii) The potential damage to electric and telephone cables which are located close by.
- iv) The potential for the tree to damage the highway and the boundary wall of the property opposite.
- v) The tree has already caused damage to the front boundary wall which requires rebuilding for which it is considered necessary to sever tree roots.

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) No supporting information has been provided to indicate that the stability of the tree is questionable. 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. This objection was received from 34 West Hill Gardens which is approximately 22 metres away from the tree.
- iii) An application to undertake pruning to ensure that the telephone wires and electric cabling would be favourably treated.
- iv) This reason was submitted by the residents of 34 West Hill Gardens. There is no evidence that the tree has caused damage to this property and no supporting information was provided. 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. There is evidence of patching to the surface of the road, however, the reason for the works is not known but is not necessarily consistent with repairs relating to root damage.

- v) It is accepted that the movement of the front boundary wall of 35 West Hill Gardens is consistent with the proximity of the Sycamore. The objector has not demonstrated that the dismantling of the damaged section of wall would necessitate the removal of the tree. Alternative methods of repair or alternative boundary treatments are considered possible if desired. The objector has not provided any supporting information to indicate that alternatives have been investigated or reasons why alternative options have been dismissed.

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 31st October 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.