

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 (17 The Linleys, Bath No.279) Tree Preservation Order 2012
WARD:	Kingsmead
AN OPEN PUBLIC ITEM	
List of attachments to this report: Plan of Site Copy of letters of objection to the Tree Preservation Order Copy of letter of support for the Tree Preservation Order	

1 THE ISSUE

1.1 An objection has been received from both Mr and Mrs Selway of 40 Edward Street following the making of the Tree Preservation Order entitled Bath and North East Somerset Council (17 The Linleys, Bath No.279) Tree Preservation Order 2012 ("the TPO"), which was provisionally made on the 11th October 2012 to protect an Ash (encircled in black 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 (17 The Linleys, Bath No.279) 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 Ash growing close to the rear boundary wall of 17 The Linleys and encircled in black on the attached plan.

4.3 This tree is within the Bath Conservation Area and the TPO was made following a review of an old Order, City of Bath ('Linleys', Audley Park Road). Tree Preservation Order 1973 which was made prior to the construction of The Linleys. The review of older TPOs is considered best practice and follows guidance from central Government.

4.4 The tree was viewed and assessed and considered to remain of sufficient landscape merit to support the making of a new TPO.

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 Two objection letters were received from the residents of 40 Edward Street which is located to the rear of 17 The Linleys. The Committee are advised to read the objections attached.

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

- i) The tree is too large for the location.
- ii) The tree is considered to be a risk should the tree collapse or be damaged by extreme weather conditions or disease.
- iii) Root growth has caused damage to the boundary wall and the objectors are concerned that the tree may damage their property.

4.9 The objections to the Tree Preservation Order outlined in section 4.5 above have been considered by Officers and the following comments are made:

- i) The tree is actively managed to contain its size within the residential area. The tree is close to the boundary wall, and therefore some overhang is inevitable, however, the objectors obtained consent to cut back a substantial amount of the overhang which, as a result will reduce the shading experienced. The tree is not considered to cause excessive shade being to the East of the objector's property.
- ii) The owner of the tree has demonstrated their duty of care by arranging for the tree to be managed and for deadwood to be removed. All tree owners are recommended to ensure that their trees are regularly inspected by a suitably qualified professional and any recommendations carried out. No arboricultural documentation has been provided by the objectors to support the need to fell the tree.
- iii) The owner of the Ash tree has written in support of the TPO and states that the boundary wall is their responsibility, not the objector's. No evidence has been provided to indicate that damage to the objector's property is foreseeable. A patio was not evident near to the tree in the objector's garden at the time of the Officer's inspection following receipt of an application to undertake tree works.

4.10 Relevant Recent History

4.11 12/02000/TPO – Reduction of canopy of overhanging growth as detailed in submitted photograph. CONSENT

4.12 12/02050/TPO - Crown lift 1 limb to 2.6m, crown thin by 20% and remove dead wood over 50mm. CONSENT

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 continue to provide the tree with protection under a TPO. The TPO was made on 11th October 2012 and took effect immediately and continues in force for a period of six months.

5.6 The tree is currently provided protection by virtue of being within the Bath Conservation Area and under the 1973 TPO, however, the intention is to revoke the old TPO.

Planning Policy

5.7 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.