

**RE: THE BOROUGH OF HINCKLEY AND BOSWORTH (LAND TO
THE REAR OF 37 BOSTON WAY, BARWELL) TREE
PRESERVATION ORDER 2011
REPORT OF
DEPUTY CHIEF EXECUTIVE (COMMUNITY DIRECTION)**



WARDS AFFECTED: BARWELL

1. **PURPOSE OF REPORT**

For members to consider the confirmation of the above Order.

2. **RECOMMENDATION**

That the Order be confirmed as made, without variation.

3. **BACKGROUND TO THE REPORT**

The Borough Council has the power to make Tree Preservation Orders under Sections 198 and 201 of the Town and Country Planning Act 1990. The above Order was made under delegated powers on 24 August 2011, copy attached to this report. The effect of the Order is to protect the trees set out in the attached schedule and plan, indicated as T1. The tree in question is an ash tree (*fraxinus excelsior*)

The Order came into effect when it was made. The reasons for making the Order are that the tree is in a healthy condition and is considered to enhance the visual amenity of the area.

The Council has received one letter of objection to the Order dated 9 September 2011. The letter encloses four photographs in support of the objections forwarded.

The Planning department attempted to address the objection via a site meeting with the objectors; however the objection has to date not been withdrawn and, as such, stands as written.

The objections are stated as below:-

- 1) The ash tree (T1) is leaning noticeably towards the objector's property.
- 2) The objectors are concerned for their long term safety due to the close vicinity of the tree to their property.

The purpose of a Tree Preservation Order is to acknowledge that the trees have public amenity value in the area and that the Order when made will protect them forever (unless the Order is varied or cancelled). The Order protects the trees from everyone not just the landowner and its neighbours. It also ensures that any works done to any of the trees must receive consent from the Council so that the works will be carried out in the safe and necessary manner.

In this particular case, the Council submits the following factors in support of the recommendation to Committee that the Order be confirmed:

- (i) The Council's Arboricultural specialist considers that the trees listed in the Schedule are worthy of protection by way of TPO in its current format even after taking into account the stated objections.

- (ii) The request for a TPO to be made came from the Parish Council expressing their high regard for the amenity of this trees and their fear it being lost or damaged.
- (iii) Points identified by the Objector, such as the danger posed by the tree contained within the TPO Schedule, are not consistent with the Report produced by the Council's Arboricultural specialist – those issues having been discussed at the site meeting.
- (iv) The tree holds sufficient amenity value to local residents and is of sufficient standard and health to warrant protection.

The Order is already in effect and will be effective until 23 February 2012. If it is confirmed then it will be effective indefinitely. This means that anyone wishing to carry out any works to the tree will have to make an application to the Council following the statutory procedure. This includes the landowner who remains responsible for the maintenance of the tree. Anyone can, however, apply for consent from the Council to do works to the tree, in particular if they wish to carry out works on trees which overlook their own land. The only time consent of the Council is not required is if a particular tree within a TPO is dead, dying or dangerous, but the person proposing the works must first show that the tree is in fact dead, dying or dangerous. In addition, the Council would require 5 days notice prior to any works being done under this exemption.

It is accordingly recommended that the Order be confirmed as it stands.

4. FINANCIAL IMPLICATIONS [CB]

None relating directly to the report

5. LEGAL IMPLICATIONS [EP]

Contained within the body of the report

6. CORPORATE PLAN IMPLICATIONS

None

7. CONSULTATION

The relevant statutory consultees have been consulted. Those who responded are referred to in the body of the report.

8. RISK IMPLICATIONS

It is the Council's policy to proactively identify and manage significant risks which may prevent delivery of business objectives.

It is not possible to eliminate or manage all risks all of the time and risks will remain which have not been identified. However, it is the officer's opinion based on the information available, that the significant risks associated with this decision / project have been identified, assessed and that controls are in place to manage them effectively.

The following significant risks associated with this report / decisions were identified from this assessment:

Management of significant (Net Red) Risks		
Risk Description	Mitigating actions	Owner
If the Order is not confirmed the tree may potentially be cut down or	Protect the tree by confirming the Tree	Simon Wood

damaged	Preservation Order	
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9. **KNOWING YOUR COMMUNITY – EQUALITY AND RURAL IMPLICATIONS [NC]**

No data which has been used to identify land owners associated with the Tree is disclosed, or shall be disclosed any point during this procedure. There will be no direct impact upon vulnerable groups as a result of this confirmation and any subsequent application which is to made to carry works to this tree will be subject to the Authority's standard procedure's in respect of aiding individuals who are disabled or have learning difficulties.

The protection of this tree will retain the existing micro climates which use this tree and the surrounding area and the environmental consequence of this Tree Preservation Order can only be considered as positive.

Where there is a proposed new service, change of service, or a new or reviewed policy, an Equality Impact Assessment is required and has been undertaken and can be viewed here: non required

10. **CORPORATE IMPLICATIONS**

By submitting this report, the report author has taken the following into account:

- Community Safety implications
- Environmental implications
- ICT implications
- Asset Management implications
- Human Resources implications
- Planning Implications
- Voluntary Sector

Background papers: The Borough of Hinckley & Bosworth (Land to the rear of 37 Boston Way, Barwell) Tree Preservation Order 2011

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