



**RE: THE BOROUGH OF HINCKLEY AND BOSWORTH (LAND AT 21 ST GEORGES AVENUE, HINCKLEY) TREE PRESERVATION ORDER 2014**

**REPORT OF DEPUTY CHIEF EXECUTIVE (COMMUNITY DIRECTION)**

**WARDS AFFECTED: HINCKLEY**

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1. **PURPOSE OF REPORT**

- 1.1 For Members to consider the confirmation of the above Tree Preservation Order

2. **RECOMMENDATION**

- 2.1 That the Tree Preservation Order be confirmed as made provisionally on 30 April 2014, without variation.

3. **BACKGROUND TO THE REPORT**

- 3.1 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 30 April 2014, 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 (being an Austrian Pine) and T2, T3 and T4 (being Atlas Pines).

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

- 3.2 The Council has received three letters of objection to the Order, two from the owners of the land subject to the Order, the other is from a neighbour. The objections and additional comments relate to the Austrian Pine tree (T1) and are summarised below:

- i) The tree root system of T1 is causing damage to the public footpath and there are possible risks to members of the public from trips and falls as a result of this and fallen pine cones and needles.
- ii) The tree root system of T1 is causing cracks to appear in the concrete section of the neighbour's drive and causing slabs to raise.
- iii) Tree T1 is dangerous as it is leaning towards the neighbour's house with the heaviest and largest branches all being on the same side.
- iv) Tree T1 creates nuisance from shedding pine cones and needles and droppings from roosting birds.
- v) The branches of tree T1 cause damage to BT telephone cables.
- vi) The confirmation of the Order on tree T1 may render a planned extension/elderly persons annex cost prohibitive to proceed. Trees within the front garden of another property in close proximity have been removed and this is inconsistent.
- vii) A previous similar Order made in 2012 was not confirmed.
- viii) Given the ongoing/recurring problems caused by tree T1 and the cost of remedial measures/works, its retention is not expedient as there is a public park full of trees in close proximity.
- ix) The trees are already afforded protection by their location within the Hollycroft Park Conservation Area.
- x) Potential liability for personal injury or compensation for damage to property or from nuisance if tree T1 is retained.

- 3.3 The Constitution confirms that Officers, in consultation with Legal Services, have delegated powers to confirm Tree Preservation Orders. However, in this case, as a result of these objections which have not been withdrawn, Councillor Witherford has requested that the confirmation of the Order be considered by the Planning Committee.
- 3.4 The purpose of a Tree Preservation Order (TPO) 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 a safe and necessary manner.

The Borough Council's Tree Officer considers that the trees listed in the Schedule are not dangerous and by virtue of their contribution to the visual amenities of the area, are worthy of protection by way of a TPO in its current format even after taking into account the stated objections. The following comments are submitted in support of the recommendation to Committee that the Order be confirmed:

- i) Highway/pedestrian safety and any damage to the surface of the public footpath is a matter for Leicestershire County Council as Highway Authority. Unless proven otherwise, any damage to the public pavement as a result of the root system of the Austrian Pine tree (T1) could be overcome by root pruning and/or an alternative surface design. The shedding of pine cones and needles is a natural occurrence and they can be swept up.
- ii) Unless proven otherwise, any damage to the driveway of the neighbour's property as a result of the root system of the Austrian Pine tree (T1) could be overcome by root pruning and/or alternative surface design.
- iii) There is no evidence that the tree is dangerous and it is in good health. The Council has not refused any consent to carry out any reasonable/necessary works to the tree.
- iv) The shedding of pine cones and needles is a natural occurrence and they can be swept up. Bird roosting is also a natural occurrence and can be deterred and droppings cleared.
- v) The BT cables run under the canopy of the tree not through it and minor pruning works would provide the necessary clearance for the future.
- vi) A TPO is not a tool to prevent or hinder development. All trees are a material consideration in any planning application and an application for planning permission will be judged on its merits and cannot be pre-judged. Both native and non-native species have historically been, and will continue to be, important in the local landscape and each is considered on its own merits.
- vii) The fact that the previous Order was not confirmed was an oversight and does not reflect on the level of the significance of the trees proposed to be protected.
- viii) The Austrian Pine tree is in a healthy condition, is prominent within the street scene and clearly visible from Hollycroft Park and therefore contributes to the visual amenity of the area. Some occasional damage to surfacing around mature trees is to be expected.
- ix) By confirming the TPO the Council could enforce replacement planting if the tree was damaged and also apply conditions to the standard of any tree surgery carried out for a protected tree which cannot be enforced for an unprotected tree within a conservation area. The Hollycroft Park Conservation Area Appraisal Map identifies the trees that are subject to this Order as 'Important Trees'.
- x) The tree owner could be liable to pay compensation if the tree has caused damage and there is a material loss in respect of an actionable or legal nuisance. This is the case whether or not the tree is protected. If the order were confirmed and the Council refused an application for works, it could be

liable to pay compensation if an application to carry out work is refused and this results in a material loss in respect of an actionable or legal nuisance. A claim could be, in theory, brought against the council should an individual feel the Council was to blame for an accident by protecting the tree, as to whether the Council would be liable, it would need to be considered on a case by case basis.

- 3.5 The Order is already in effect and will be effective until 30 October 2014. If it is confirmed then it will be effective indefinitely. This means that anyone wishing to carry out 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 overhang their own land.

#### 4. FINANCIAL IMPLICATIONS [IB]

- 4.1 None arising directly from the report.

#### 5. LEGAL IMPLICATIONS [EH]

- 5.1 The Council is required to consider the objections raised and outlined within this report prior to making a decision to confirm the order. There is no guidance with regards to objections and members should consider whether any of the objections affect the decision of the Council and whether, to confirm it as drafted, confirm it with modifications based upon the objections or refuse to confirm it.

- 5.2 Upon making and/or confirmation of a TPO as with owners of unprotected trees, the owner of land with a protected tree on it is responsible for maintaining those trees. There are no statutory rules setting out how often or to what standard and the local planning authority cannot require maintenance work to be done to a tree just because it is protected.

- 5.3 Once confirmed, any works to the trees will require the consent of the Council, unless they are works which are "necessary to prevent or abate a nuisance". The term 'nuisance' is used in a legal sense, not its ordinary everyday sense and therefore it does not allow works to be undertaken without there being clear evidence of a nuisance. Were works undertaken without consent where they were not necessary to abate or prevent a nuisance the Council would be entitled to use its enforcement powers under the legislation. The exemption applies only where the nuisance is 'actionable', in other words where the overhanging branches or roots are causing, or there is an immediate risk of their causing, actual foreseeable damage. The Council's consent would be required under the TPO before cutting back branches or roots which are not causing damage. If work is carried out on a protected tree under this exemption the burden of proof to show, on the balance of probabilities, that the tree was exempt rests with the person undertaking the work.

#### 6. CORPORATE PLAN IMPLICATIONS

- 6.1 None.

#### 7. CONSULTATION

- 7.1 Relevant consultees have been consulted and the comments of those who responded are referred to in the body of the report.

#### 8. RISK IMPLICATIONS

- 8.1 It is the Council's policy to proactively identify and manage significant risks which may prevent delivery of business objectives.
- 8.2 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.
- 8.3 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 trees may potentially be cut down or damaged.	Protect the trees by confirming the Tree Preservation Order.	Nic Thomas

## 9. KNOWING YOUR COMMUNITY – EQUALITY AND RURAL IMPLICATIONS

- 9.1 There will be no direct impact upon vulnerable groups as a result of the confirmation of the Tree Preservation Order and any subsequent application which is to be made to carry out works to these trees will be subject to the Authority's standard procedure's in respect of aiding individuals who are disabled or have learning difficulties.
- 9.2 The protection of these trees will retain the existing micro climates and biodiversity of the trees and the surrounding area and the environmental consequence of this Tree Preservation Order can only be considered as positive.
- 9.3 Where there is a proposed new service, change of service, or a new or reviewed policy, an Equality Impact Assessment is relevant. Not relevant in this case.

## 10. CORPORATE IMPLICATIONS

- 10.1 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 and Bosworth (Land at 21 St Georges Avenue, Hinckley) Tree Preservation Order 2014  
The Borough of Hinckley and Bosworth (Land at 21 St Georges Avenue, Hinckley) Tree Preservation Order 2012

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