

ITEM NO.	
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TITLE	: TREE PRESERVATION ORDER – 25 & 27 NUTTALL HALL ROAD		
TO / ON	: Planning Control Committee	25 th March 2003	
FROM	: Borough Planning & Economic Development Officer		
STATUS	: FOR PUBLICATION		

1.0 TYPE OF DECISION

1.1 What type of decision is to be taken:-

EXECUTIVE DECISION				COUNCIL DECISION	
Key		Non Key		YES	

1.2 If a key decision, has it been included in the Forward Plan

Inclusion in Forward Plan	(Yes or No)	Date of Plan	
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2.0 SUMMARY

<p>Recommendation for the confirmation of the Metropolitan Borough of Bury (25 & 27 Nuttall Hall Road) Tree Preservation Order 2003.</p>
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3.0 **OPTIONS AND RECOMMENDED OPTIONS (with reasons)**

The Order may be confirmed to secure its permanent status or allowed to lapse after its provisional six month period. It is recommended that the Order is confirmed to maintain the Authority's policy under the LA21 Strategy.

4.0 **THIS REPORT HAS THE FOLLOWING IMPLICATIONS**

Corporate Aims

Improve transport and the environment.

Policy Framework

LA21 Strategy – Objectives to protect and enhance landscape qualities requires action to designate tree preservation orders.

Statement by Monitoring Officer

Action in accordance with Section 201 of the Town and Country Planning Act 1990.

Statement by Director of Finance & E-Government

No financial implications

Human Resource IT/Land and Property Implications

Staff time will be required to administer the order and respond to applications for consent to carry out work on the trees.

Wards/Area Boards affected

Ramsbottom

Scrutiny Panel's Interest

N/a

Consultations

Council Solicitor

Call-in**Briefings**Executive
Members/
ChairChief
Executive**5.0 INTRODUCTION**

5.1 On the 24th October 2002 the Council made the Metropolitan Borough of Bury (25 & 27 Nuttall Hall Road) Tree Preservation Order under Section 201 of the Town and Country Planning Act 1990. This requires the Order to be confirmed within six months to assure its permanence.

6.0 BACKGROUND

6.1 The trees in question are situated in gardens of houses lying along Nuttall Hall Road, the main access road into Nuttall Park. These trees are mature woodland species and each individually plays a highly significant role in the creation of the valuable woodland character around the main access into Nuttall Park. Concerns about the future development of existing properties at Nos 25 & 27 Nuttall Hall Road from the Planning Development Control Officers prompted a Tree Preservation Order to be initiated in order to secure the retention of these trees.

7.0 ISSUES

7.1 Halliwell Landau Solicitors, acting on behalf of Mr and Mrs Hallworth of 27 Nuttall Hall Road wrote to obtain confirmation about the following points:

7.1.1 Whether the council has served the notice on the owners of the property.

7.1.2 Whether tree No T15 was in the curtilage of house No 25 as shown or in the curtilage of No 23.

7.1.3 The council can confirm that inspections of the trees took place only from the highway and inspectors did not enter the land.

7.2 The following addresses the issues raised by Halliwell Landau:

7.2.1 The Council can confirm that notice of the TPO was served on the owners of the property.

7.2.2 The Council accepts that tree No T15 is in the curtilage of house No 23 and will alter the TPO schedule and plan as attached for confirmation.

- 7.2.3 The Council can confirm that inspections of the trees took place only from the highway and inspectors did not enter the land.
- 7.3 OCA UK Ltd, consulting arboriculturalists have objected to the making of the order as permitted under its conditions. Their grounds for objecting are as follows:
 - 7.3.1 The Order omits reference to woodlands when the Regulations and Model Order require that that this form of specifying trees is included and the word none written below.
 - 7.3.2 The road name given in the order is wrong. The road name given is Nuttall Hall Lane when it should be Nuttall Hall Road.
 - 7.3.3 The Location listed on the tree schedule is wrong because the trees are listed as being 'along Nuttall Hall Road ' whereas they are in fact in the front gardens of 25 & 27 Nuttall Hall Road.
 - 7.3.4 Not all the trees are covered which makes locating the preserved trees confusing.
 - 7.3.5 On the map which forms part of the order, the road upon which the first schedule states the trees are placed, is not named.
 - 7.3.6 The trees are designated as closed black dots on the map. Regulations require that trees are encircled.
- 7.4. The council has not provided any evidence nor indicated that it has in fact assessed the 'visual amenity' of the trees and if it has assessed them it has not provided the basis upon which it has assessed the 'visual amenity' in making the order. Whether the council has served the notice on the owners of the property.
- 7.5 The quality of the trees is questionable. The map is not useful enough to help locate the preserved trees
 - 7.5.1 All the trees in the area form part of a woodland. The order should not have been created to protect 17 selected trees out of hundreds in the location.
 - 7.5.2 The council has not served the Landowners with a Notice under Regulation 3 of the 1999 Regulations which sets out the reasons for making the Order and informing the Landowners of their right of objection.
 - 7.5.3 The TPO was created to stifle any development potential of the land.
- 7.6. The Order breaches the Human Rights Legislation. The Order as served represents a charge on the owner's land and restricts their use and enjoyment of it.
 - 7.6.1 Because the council is the policy maker and decision maker and that objections about the order are heard and assessed by the same person who makes the order a person's right, under the Human Right's legislation, to have a free, fair and impartial hearing regarding matters which effect the peaceful enjoyment of their land or property is compromised.
- 7.7. The following addresses the objections from OCA UK Ltd (in response to 7.3).
 - 7.7.1 Reference to a woodland Preservation Order need only be made if a woodland is selected as part of a Tree Preservation Order. In this case it was deemed that the trees had enough value individually to warrant an individual Preservation Order on each tree

- 7.7.2 The Road name given in the Order was wrong and shall be changed for confirmation of the Order.
- 7.7.3 The location given on the original schedule is correct in so far as the trees are located in close proximity to Nuttall Hall Road. However, strictly speaking the precise location of the trees is in the front gardens of 23, 25 & 27 Nuttall Hall Road. The schedule will therefore be amended for confirmation to reflect this.
- 7.7.4 Location of the trees is the responsibility of the person wishing to do work to those trees. A scale map is also provided which should assist in locating the trees. The council will assist further in locating the trees if permission for work is sought.
- 7.7.5 The road name included in the Order will be placed on the map for confirmation.
- 7.7.6 Trees designated as closed black dots does not compromise the legality of a Tree Preservation Order.
- 7.8 (In response to 7.4)
- 7.8.1 The Council is not legally obliged to supply the evidence of assessment of the trees or the basis upon which the trees have been assessed. The criteria stated by OCA UK Ltd can be used to assess a tree but this information does not need to be documented in any legal process.
- 7.9 (In response to 7.5)
- 7.9.1 The map together with the schedule can be used to locate the trees in the TPO.
- 7.9.2 As noted above in 7.6.1 the trees have enough amenity value individually to warrant the trees to be covered in the order as individual specimens, and not defined as woodland.
- 7.9.3 The letter served with the copy of the Order Begins with the words. 'THIS IS A FORMAL NOTICE'. This complies with Paragraph 3 of the 1999 Regulations and in any event follows the words of the model letter to people affected by the TPO.
- 7.9.4 The Order has been made to protect individual trees not to gain control over a wide area. This would have been the case if, as suggested by OCA UK Ltd, a Woodland Order covering all the woodland in the area had been initiated.
- 7.10. (in response to 7.6)
- 7.10.1 It is neither the function nor intention of a Tree Preservation Order that it should interfere with the peaceful enjoyment of people on whose land the trees are situated. In the making of this order an appropriate balance has been struck between the demands of the public and the individual rights of the inhabitants of 23, 25 & 27 Nuttall Hall Road. Many of the Council's decisions involve the balancing of public and private interests. Therefore, the principle of proportionality has also been satisfied.
- 7.10.2 With regard to a person's right to a fair trial, the relevant impartial Tribunal in the case of Tree Preservation Orders is a Judicial Review. If any Local Authority could be found to have acted ultra vires, by taking into account irrelevant considerations, not taking into account relevant considerations or acted otherwise unreasonably in

the making of any of its decisions, then the Judicial Review procedure is the correct and fair remedy.

8.0 CONCLUSIONS

- 8.1 The loss of the trees covered by this Preservation Order would have a significant effect on the appearance of the environment around Nuttall Hall Road as enjoyed by its residents and many visitors. Confirmation of the Tree Preservation Order with the agreed amendments would secure permanence of the trees' protection, ensuring their ongoing contribution to the amenity value of the area.

BRIAN DANIEL
BOROUGH PLANNING & ECONOMIC DEVELOPMENT OFFICER

Background documents:

- (1) Tree Preservation Order, 25 & 27 Nuttall Hall Road file ref. TP233
- (2) Letter from Halliwell Landau Solicitors, 29th November 2002
- (3) Letter from OCA UK Ltd, arboricultural consultants, 28th November 2002
- (4) Letter from Legal and Democratic Services, Bury MBC, 20th December 2002
- (5) Letter from Legal and Democratic Services, Bury MBC, 16th January 2003

For further information on the details of this report, please contact:

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