



<b>Classification</b>	<b>Item No.</b>
<b>Open</b>	<b>7</b>

<b>Meeting:</b>	<b>Planning Control Committee</b>
<b>Meeting date:</b>	<b>9<sup>th</sup> November 2021</b>
<b>Title of report:</b>	<b>Tree Preservation Order Confirmation</b>
<b>Report by:</b>	<b>Head of Development Management</b>
<b>Decision Type:</b>	<b>Council</b>
<b>Ward(s) to which report relates</b>	<b>Whitefield and Unsworth</b>

## **Introduction**

This report sets out the issues relating upon the current temporary tree preservation order Tree Preservation Order (No. 357) 2021 at 107 Heathfield Road, Whitefield.

## **Discussion**

Planning application 66943 was submitted for a Two storey extension at side; porch at front; 2 no. new parking spaces with new vehicular access and erection of 1.8 metres high boundary fencing; Change of use of grass verge to residential garden. This application would have required the removal of a cherry tree to the front of the property.

The planning application has been withdrawn pending the outcome of the Tree Preservation Order.

On 10th September 2021, the Council imposed a temporary Tree Preservation Order, concerned that the tree in question was under threat due to the submitted planning application and that its loss would have a significantly detrimental impact on the

character of the locality. In total the TPO covers 1 cherry tree, indicated on the plan attached as Appendix 1 to this report.

The Order prohibits the felling, lopping, topping, uprooting or otherwise wilful damaging of trees without the permission of the Council.

The Council has six months in which to confirm this Order. If the TPO is not confirmed within six months, the Order will lapse, the tree will no longer be protected and could be removed. If the Order is confirmed, it will take effect on a permanent basis and the tree will continue to be protected.

The Council cannot confirm an Order unless it have first considered any duly made objections or other representations.

### **Issues**

Subject to Regulation 6 of The Town and Country Planning (Tree Preservation) (England) Regulations 2012, objections and representations that are made in writing must be appropriately considered.

Letters of notification were issued to the landowner and as a result, a representation was received from the land owner dated 11th October 2021.

Summary of representations.

- TPO has prevented life long plans of construction of an extension and fencing side garden.
- Have had plans to turn this area of land into a garden since the property was purchased 12 years ago.
- The side plot gets more sun than the existing rear garden.
- We could have removed the tree prior to submitting the planning application as other neighbour's have done but wanted to be honest and go through the correct process.
- Application has drawn attention to our tree and in turn ruined our future plans for our house and family.
- Would like the Council to reconsider it's decision and offer an option as to how a 6 foot fence can be erected all around the perimeter of the site to enclose the garden for privacy and security.
- Request the full report for the TPO.

### **LPA Response.**

Quality, Character and amenity value - Following a site visit and assessment by the Council's Planning and Trees and Woodland's Officer, the Council does not agree with the assessment presented by the objector that their development can no longer take

place due to the TPO. The following assessment has been made in relation to the tree:

The tree in question is a mature Cherry tree. The defect on the side trunk is a Gaul which is just a malignant growth and shouldn't be a problem.

The tree is in reasonable health and condition. No sign of die -back in the crown. There is no sign of cavities or fungal growth. Height aprox.8m.circa 5m.

Some previous pruning work is evident on the lower part of the tree.

The assessment concluded that the Council's Tree's and Woodland's Officer would recommend this tree for protection by a TPO and as such this was progressed as planning application 66943 sought to remove the tree.

The tree is very prominent within the street scene as the site is not currently enclosed and as such it contributes to the visual amenity of the area. The tree is visible from Heathfield Road and Ripon Avenue (see Appendix 2). Government guidance states that Orders should be used to protect selected trees if their removal would have a significant negative impact on the local environment and its enjoyment by the public. The amenity is under threat due to the proposed development and it is considered removal of the tree would have a negative impact on the local environment by removal of a significant element of soft landscaping. There are other trees within the street that also contribute to it's amenity and it is noted that these other trees within the locality are not TPO'd however, these trees are not under threat.

The TPO is not being used as a means to control development but to retain the tree and site's amenity value of which the tree significantly contribute. The applicant can still enclose this area of garden subject to amendments previously requested and can construct a side extension provided a tree report is provided and appropriate root protection measures are implemented. As such it is not considered that the TPO would necessarily restrict appropriate development on the site.

### **Recommendation**

That the current temporary preservation order issued on the trees within the curtilage of the site as identified in Appendix 1 is confirmed so that the Order takes effect on a permanent basis.

### **List of Background Papers:-**

Temporary Tree Preservation Order dated 10th September 2021

The Town and Country Planning (Tree Preservation) (England) Regulations 2012

---

## Community impact/links with Community Strategy

---

### Equality Impact and considerations:

*Under section 149 of the Equality Act 2010, the 'general duty' on public authorities is set out as follows:*

*A public authority must, in the exercise of its functions, have due regard to the need to -*

- (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;*
- (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;*
- (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.*

*The public sector equality duty (specific duty) requires us to consider how we can positively contribute to the advancement of equality and good relations, and demonstrate that we are paying 'due regard' in our decision making in the design of policies and in the delivery of services.*

<b>Equality Analysis</b>	<i>Please provide a written explanation of the outcome(s) of either conducting an initial or full EA.</i>
No impact	

*\*Please note: Approval of a cabinet report is paused when the 'Equality/Diversity implications' section is left blank and approval will only be considered when this section is completed.*

---

### Assessment of Risk:

The following risks apply to the decision:

<b>Risk / opportunity N/A</b>	<b>Mitigation N/A</b>
-------------------------------	-----------------------

	.
--	---

---

**Consultation: Council's arboriculturalist. Their comments are included within the report.**

---

**Legal Implications:**

The decision to confirm a TPO may be challenged in the High Court by persons aggrieved within six weeks.

---

**Financial Implications:**

*To be completed by the Council's Section 151 Officer*  
N/A

---

**Report Author and Contact Details:**

Helen Pressley

[H.Pressley@bury.gov.uk](mailto:H.Pressley@bury.gov.uk)

---

**Background papers:**

Temporary Tree Preservation Order dated 10th September 2021

The Town and Country Planning (Tree Preservation) (England) Regulations 2012

**Please include a glossary of terms, abbreviations and acronyms used in this report.**

Term	Meaning
TPO	Tree Preservation Order