

# REPORT FOR DECISION

<b>DECISION OF:</b>	<b>PLANNING CONTROL COMMITTEE</b>
<b>DATE:</b>	<b>29 August 2023</b>
<b>SUBJECT:</b>	<b>CONFIRMATION OF TREE PRESERVATION ORDER</b>
<b>REPORT FROM:</b>	<b>HEAD OF DEVELOPMENT MANAGEMENT</b>
<b>CONTACT OFFICER:</b>	<b>DAVID MARNO</b>
<b>TYPE OF DECISION:</b>	<b>COUNCIL</b>
<b>FREEDOM OF INFORMATION/STATUS:</b>	This paper is within the public domain
<b>SUMMARY:</b>	This report sets out the issues relating upon the current temporary tree preservation order Tree Preservation Order (No.361) at Land adjacent to 78 Countess Lane, Radcliffe, M26 3NH
<b>OPTIONS &amp; RECOMMENDED OPTION</b>	The Committee is recommended to the note the report and appendices
<b>IMPLICATIONS:</b>	
<b>Corporate Aims/Policy Framework:</b>	Do the proposals accord with the Policy Framework? Yes
<b>Statement by the S151 Officer: Financial Implications and Risk Considerations:</b>	Executive Director of Resources to advise regarding risk management
<b>Statement by Executive Director of Resources:</b>	N/A
<b>Equality/Diversity implications:</b>	No
<b>Considered by Monitoring Officer:</b>	N/A
<b>Wards Affected:</b>	All listed
<b>Scrutiny Interest:</b>	N/A

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**TRACKING/PROCESS**

**DIRECTOR:**

Chief Executive/ Strategic Leadership Team	Executive Member/Chair	Ward Members	Partners
Scrutiny Committee	Committee	Council	

**1.0 BACKGROUND**

This report sets out the issues relating upon the current temporary tree preservation order Tree Preservation Order (No. 361) at Land adjacent to 78 Countess Lane, Radcliffe, M26 3NH

**2.0 CONCLUSION**

That the current temporary preservation order issued on the trees within the curtilage of the site as identified in Appendix 1 & 2 is confirmed.

The decision to confirm an Order may be challenged in the High Court within six weeks.

**List of Background Papers:-**

Appendix 1 - Temporary Tree Preservation Order 361 dated 20 April 2023  
(The Town and Country Planning (Tree Preservation) (England) Regulations 2012);  
Appendix 2 - TPO OS map

**Contact Details:-**

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## **Introduction**

This report sets out the issues relating upon the current temporary tree preservation order Tree Preservation Order (No. 361) at Land adjacent to 78 Countess Lane, Radcliffe, M26 3NH

## **Discussion**

Planning application 69215 was submitted for erection of 1 no. dwelling. This application would have required the removal of 2no. Ash trees within the site, and 1no. Ash tree located on the adopted highway/footpath to the front of the site.

The planning application was refused.

On 20<sup>th</sup> April 2023 the Council imposed a temporary Tree Preservation Order, concerned that the trees in question were 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 4no. Ash trees, 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 30<sup>th</sup> May 2023.

## **Summary of representations.**

- As being the landowner, this is having a detriment effect on any future planning of the land.
- The area highlighted consist of 4 trees, 1 which is main public footpath, 2 which are located within the boundary of the land nearest to the main road (countess lane) and third at the back of the land. The trees which are located inside the boundary closest to countess lane, although they are formed, they are not as old as the other 2 trees and would therefore have no impact on the area if they are removed. The 2 trees are located at a short distance to the houses which in future as they grow can potentially lean in to their gardens or cause future damage
- There are no habitable wildlife on the land or on the land which may have an impact.

- According to my knowledge, there wasn't or has been a preservation order in place
- The land itself where the trees are located is a private owned and therefore not open to the public
- Neither of the trees are protected
- I would also like to state in regards to the preservation order, I am willing to work with the local authority and ensure the tree located on the footpath and the back of the land to be preserved with a view the remaining 2 trees closest to the countess lane inside the boundary to be removed.

### **Breach of Temporary Order**

The council was notified on the 7<sup>th</sup> June 2023 that one of the trees covered by the Order had been felled. No consent had been sought or granted in relation to these works.

### **LPA Response**

In addition to the Town and Country Planning Act legislation set out above, UDP Policies EN8, EN8/1 and EN8/2 seek to support the retention of trees, woods, copses and hedgerows to encourage natural regeneration and new and replacement tree planting.

Following the submission of planning application 69215 an assessment of the trees has been conducted by the Planning Officer and the Council's Trees and Woodland's Officer who deemed the trees worthy of a TPO. As such the 4 no. Ash trees have been protected by means of Tree Preservation Order No.361.

The 3no. Ash trees to the front of the site, including the Council street tree, and the Ash tree to the rear of the site were noted as being very prominent within the street scene as the site is not currently enclosed. As such the trees were assessed at the time of the planning application to contribute to the visual amenity of the area. The trees are visible from Countess Lane, Westminster Avenue and Ashcombe Drive. 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 of the trees was under threat due to the proposed development and it is considered removal of the trees 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.

An arboricultural statement was submitted with the planning application, this recommended the removal of the three trees to the front of the site to allow for the construction of the proposed dwelling and access. It should be noted however that his document was produced prior to the TPO being sealed and as such the author has not had the benefit of including this within their assessment. This survey categorises the trees to be removed as grade B1 (Moderate) to C2 (Low quality) and considered that T3 may have signs of Ash dieback. This was not noted by the Trees and Woodlands Officer who undertook the assessment on behalf of the Council. They consider the trees to be of a reasonable condition but did note that the trees should be checked periodically for dieback due to the species.

It should also be noted that the submitted arboricultural survey was undertaken in February when the tree would not have been in leaf, and whilst it would be possible to see if there were buds at the ends of the branches the author would not have been unable to make a full assessment in relation to canopy loss through potential ash dieback. Ash trees are also notorious for deadwood, and this is therefore not necessarily a sign of ash die back. A point to also remember is that infected trees can recover over subsequent years. A survey mid-summer for change in density foliage, with a further inspection late summer for any signs of fungal growth would be beneficial for T3.

Anyone who contravenes an Order by damaging or carrying out work on a tree protected by an Order without getting permission from the local planning authority is guilty of an offence and may be fined. The removal of one of the trees, contrary to the temporary Order should not prevent the Order being confirmed.

A landowner has a duty to replace a tree which is removed in contravention of an Order. By confirming the Order the Council will have powers to enforce tree replacement on this site.

### **Recommendation**

That the current temporary preservation order issued on the trees 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 20<sup>th</sup> April 2023

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

**TREE PRESERVATION ORDER**  
**Town and Country Planning Act 1990**

**The Metropolitan Borough of Bury**  
**(Land adjacent to 78 Countess Lane, Radcliffe M26 3NH)**  
**Tree Preservation Order (No. 361) 2023**

The Metropolitan Borough of Bury (Bury Council) in exercise of the powers conferred on them by section 198 of the Town and Country Planning Act 1990 make the following Order—

**Citation**

1. This Order may be cited as the Metropolitan Borough of Bury (Land adjacent to 78 Countess Lane, Radcliffe M26 3NH) Tree Preservation Order (No.361) 2023

**Interpretation**

2.—(1) In this Order “the authority” means Bury Council

(2) In this Order any reference to a numbered section is a reference to the section so numbered in the Town and Country Planning Act 1990 and any reference to a numbered regulation is a reference to the regulation so numbered in the Town and Country Planning (Tree Preservation) (England) Regulations 2012.

**Effect**

3.—(1) Subject to article 4, this Order takes effect provisionally on the date on which it is made.

(2) Without prejudice to subsection (7) of section 198 (power to make tree preservation orders) or subsection (1) of section 200 (tree preservation orders: Forestry Commissioners) and, subject to the exceptions in regulation 14, no person shall—

(a) cut down, top, lop, uproot, wilfully damage, or wilfully destroy; or

(b) cause or permit the cutting down, topping, lopping, wilful damage or wilful destruction of,

any tree specified in the Schedule to this Order except with the written consent of the authority in accordance with regulations 16 and 17, or of the Secretary of State in accordance with regulation 23, and, where such consent is given 20<sup>th</sup> subject to conditions, in accordance with those conditions.

**Application to trees to be planted pursuant to a condition**

4. In relation to any tree identified in the first column of the Schedule by the letter “C”, being a tree to be planted pursuant to a condition imposed under paragraph (a) of section 197 (planning permission to include appropriate provision for preservation and planting of trees), this Order takes effect as from the time when the tree is planted.

Dated this 20<sup>th</sup> day of April 2023.

The Common Seal of the Metropolitan Borough of Bury was affixed to this Order in the presence of—

*Andy Carille*

Andy Carille 20 Apr 2023 11:23:16 BST (UTC +1)

Authorised by the Council to sign in that behalf

168/23



Seal ID: 22974

**CONFIRMATION OF ORDER**

This Order was confirmed by the Metropolitan Borough of Bury without modification on the  
day of 20

OR

This Order was confirmed by the Metropolitan Borough of Bury, subject to the modifications  
indicated by , on the day of 20

Signed on behalf of the Metropolitan Borough of Bury

.....  
Authorised by the Council to sign in that behalf

**DECISION NOT TO CONFIRM ORDER**

A decision not to confirm this Order was taken by the Metropolitan Borough of Bury on the  
day of 20

Signed on behalf of the Metropolitan Borough of Bury

.....  
Authorised by the Council to sign in that behalf

**VARIATION OF ORDER**

This Order was varied by the Metropolitan Borough of Bury on the day of  
20 by a variation order under reference number a copy of which is  
attached

Signed on behalf of the Metropolitan Borough of Bury

.....  
Authorised by the Council to sign in that behalf

**REVOCACTION OF ORDER**

This Order was revoked by the Metropolitan Borough of Bury on the day of  
20

Signed on behalf of the Metropolitan Borough of Bury

.....  
Authorised by the Council to sign in that behalf

**SCHEDULE****SPECIFICATION OF TREES****Trees specified individually**  
(encircled in black on the map)

<i>Reference on map</i>	<i>Description</i>	<i>Situation</i>
None.		

**Trees specified by reference to an area**  
(within a dotted black line on the map)

<i>Reference on map</i>	<i>Description</i>	<i>Situation</i>
None.		

**Groups of Trees**  
(within a broken black line on the map)

<i>Reference on map</i>	<i>Description</i>	<i>Situation</i>
G1	4 Ash trees.	Land adjacent to 78 Countess Lane, Radcliffe M26 3NH.

**Woodlands**  
(within a continuous black line on the map)

<i>Reference on map</i>	<i>Description</i>	<i>Situation</i>
None.		



# Map referred to in the Metropolitan Borough of Bury (Land adjacent to 78 Countess Lane) Tree Preservation Order (No. 361) 2023



Scale: 1 to 750 at A4  
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THE COMMON SEAL of THE METROPOLITAN BOROUGH OF BURY was hereunto affixed on the 20th day of April 2023 in the presence of:-

Andy Carve  
 Andy Carve 20 Apr 2023 11:23:19 BST UTC+1  
 Council Solicitor



Seal ID: 22975