

STAFFORDSHIRE MOORLANDS DISTRICT COUNCIL

Report to Planning Applications Committee

22nd November 2018

TITLE:	To consider confirmation of Tree Preservation Order No. SM.307 – 10 Curzon Rise, Leek
PORTFOLIO:	Councillor E Wain - Planning, Development and Property
OFFICER:	Steve Massey, Arboricultural Officer
WARD:	Leek West

Appendices Attached –

Appendix A: Plan for current provisional TPO No. SM.307.

Appendix B: Schedule for current provisional TPO No. SM.307.

Appendix C: Proposed amended plan for TPO No. SM.307.

Appendix D: Proposed amended schedule for TPO No. SM.307.

1. Recommendation

- 1.1 That notwithstanding the objections received, Tree Preservation Order (TPO) No. SM.307 be confirmed, but with modification to omit tree T2 (Black Pine) in accordance with the proposed amended plan and schedule included as Appendices C and D to this report respectively.

Reason for recommendation: In order to maintain legal protection over significant trees, but acknowledging that issues have come to light in relation to tree T2 which are considered to make it inappropriate to retain TPO control over this tree.

2. Executive Summary

- 2.1 Under the Council's Constitution, there are officer delegated powers to confirm a provisional TPO in respect of which no objections have been received. However, where objections are received, Planning Applications Committee must consider and decide whether to confirm the Order, and in

doing so must take into account such objections and representations as have been received.

- 2.2 TPO No. SM.307 was made as a provisional Order on 26th July 2018, protecting 4 individual trees situated at 10 Curzon Rise. A copy of the provisional TPO plan is attached at Appendix A, and the schedule at Appendix B.
- 2.3 Objection to the TPO has been submitted by the property owners; by the owner/occupier of a neighbouring property Ravenscroft, Westwood Park Drive; and by Leek Town Council. These are considered in detail at Section 5 of this report.
- 2.4 There are issues which have come to light since the TPO was first made, and which are noted in the tree owners' grounds of objection, in relation to structural damage to a retaining wall which appears to be caused by the roots of the Pine tree protected as T2. These issues are considered valid and, on balance, overriding. It is therefore recommended that legal protection over T2 be no longer maintained.
- 2.5 Notwithstanding objections in relation to T1, T3 and T4, it is considered that these trees are of significant public amenity value and appropriately protected by TPO. In conclusion it is now recommended that TPO No. SM.307 be confirmed, but with modification to omit T2.

3 Background

- 3.1 A request for the Council to consider making this TPO was received in May 2016 from the owner/occupier of an immediately adjacent property. The current owners of No. 10 had at that time only recently acquired the property but not taken up occupancy, and the neighbour was concerned that removal of trees may be intended. An initial assessment at that time found that there were several trees considered to be either too close to the dwelling and/or of less than significant public amenity value, and the larger trees which have subsequently been protected were not considered to be under particular threat at the time.
- 3.2 However, the request was repeated in April 2018 after some tree removal had been carried out, together with pruning of the Beech T1 at the property frontage. The neighbour felt strongly that some or all of the larger trees were also under threat, and the owners' subsequent objection has confirmed that to be the case. The TPO was duly made.
- 3.3 Whilst there may well have been some private amenity interest behind the request for a TPO to be made, the trees have been included in the TPO for their contribution to public amenity value and to the character of the local townscape, as seen and appreciated from publicly accessible locations. The neighbour was advised at the time that it is not the purpose of a TPO to protect the private amenity of individual properties or that of their occupiers.

3.4 The tree owners, together with another neighbour on Westwood Park Avenue, and also Leek Town Council, have taken up their opportunity to submit objection to the TPO, and these objections must now be taken into account in considering whether to confirm the Order. The purpose of this report is to present the issues, the grounds of objection and comments in response, and to offer guidance and recommendation on resolving this matter to the committee.

4. Implications

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| 4.1 | <u>Community Safety - (Crime and Disorder Act 1998)</u> | Nil. |
| 4.2 | <u>Employees</u> | Nil. |
| 4.3 | <u>Equalities</u> | This report has been prepared in accordance with the Council's Equal Opportunities policy. |
| 4.4 | <u>Financial</u> | There is no financial liability on this Council arising from making and confirming, or not confirming, a TPO – with or without modification. However, following any subsequent application for consent, anyone suffering loss or damage arising as a consequence of the Council's decision to refuse consent, or to impose conditions when granting consent, may seek compensation from the Council, subject to the provisions of the Town and Country Planning (Trees) (England) Regulations 2012. Any claim must be submitted within 12 months of such an application being determined. |
| 4.5 | <u>Legal</u> | Nil. |
| 4.6 | <u>Sustainability</u> | Confirmation of the TPO would appropriately maintain protection over trees of significant local amenity value, in support of local and national environmental protection objectives and the Council's adopted Tree Strategy. |

Keith Parker
Head of Operational Services

Background Papers

TPO SM.307

Location

By request at:
Staffordshire Moorlands District Council
Moorlands House
Leek

Contact

Steve Massey
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Decision:**Reason:****Interests Declared:****5. Detail and Discussion**

- 5.1 The owners of 10 Curzon Rise have raised numerous points in their objection, both in relation to each of the individual trees included in the TPO and more generally. These points are set out below, and addressed with officers' comments in italics following each issue.
- 5.2 The intention is to retain the Beech T1 and manage it conservatively; pruning work was carried out to this tree prior to the TPO being made, which took into account the neighbour's wishes even though this has left the tree somewhat unbalanced and aesthetically poor. In view of sympathetic management intentions, protecting T1 by TPO is not necessary. *Comment: Whilst the pruning work has not been harmful and demonstrates a current intention to retain the tree, this intention may change in the future, or indeed future owners may take a different view. In the meantime, the TPO would not be a constraint to the owners' desire to retain the tree, and a pruning application has very recently been approved under delegated powers to allow some relatively minor work aimed at improving the balance and aesthetics of the lower crown.*
- 5.3 The Pine T2 is considered too tall for a residential garden. The tree is close to the rear of the dwelling, and general clearance work undertaken since the TPO was made has revealed root damage to the adjacent blockwork retaining wall, with roots growing through the wall and notable cracking and disruption to the blocks and mortar joints. *Comment: It is evident that roots from T2 are damaging the retaining wall. Whilst it is not considered to be in imminent danger of collapse, the damage will inevitably get worse while the tree remains in situ, and in these circumstances, not known at the time the Order was made, it would be unreasonable to prevent the owners from dealing with this situation. Maintaining protection over this tree and refusing a future application to fell it, may lead to a liability on the Council to pay compensation for any subsequent damage arising. Although the height of the Pine, estimated as 16-17m, is not considered to be a problem in itself, and the tree is*

considered to be of significant amenity value which would be lost if it were to be removed, on balance it is recommended that T2 be omitted from the TPO.

- 5.4 The Cedar T3 is considered too tall and wide for a residential garden, and being non-deciduous is too oppressive. The base of the canopy is too high above ground level to offer the garden itself, and its owners, any significant amenity. *Comment: The Cedar is estimated to be approximately 17-18m tall, with a crown radius of around 7.5m. This is by no means unusual for a mature tree, and there are numerous trees of this size or more, deciduous and evergreen, protected and non-protected, in countless gardens up and down the country. Large trees arguably have greater amenity value, being more readily visible from the surrounding area. A Deodar Cedar is a notably graceful and attractive tree, and the fact that it is evergreen does not detract from this nor in itself make a tree oppressive. The elevated ground level of the back garden of 10 Curzon Rise relative to the house increases the prominence of these trees, but also their perception of dominance. However, the majority of the garden area is clear of the trees' canopies, and with the protected trees generally situated along the northern side the garden will receive a good amount of unobstructed sunlight. The lowest branches of the Cedar come within approximately 2.5 – 3.0m of the ground; this is lower than many mature trees, and whilst still allowing reasonable walking headroom beneath the crown this is comfortably low enough to contribute to the character and amenity of this garden itself.*
- 5.5 The structure of the Cedar T3 is trifurcated, dividing into 3 main stems from the base which is not readily apparent from public viewpoints; this, together with the sloping site, is considered to affect its stability and increase the risk of it falling. A cable brace could be installed between stems, but the owners consider it inappropriate that they should pay for this for the public benefit of a protected tree. *Comment: a triple-stemmed tree is not per se of any less amenity value than a single-stemmed tree. Multi-stemmed trees are by no means unusual, and would not be considered inherently dangerous simply because of such structure. There is no obligation to install a cable brace, and this has not been advised or recommended by the arboricultural officer. Similarly, trees growing on sloping ground have usually adapted to such situation throughout their lives and are not considered to be at notably greater risk of failure.*
- 5.6 The roots of T3 are putting pressure on slabs at the top of the main garden retaining wall compromising their stability. *Comment: The line of slabs on-edge is clearly not designed or constructed to be formal retaining structure, and the pressure of ground water and soil slump could over time contribute to them being displaced. At this distance from the base of a tree, direct contact from root growth alone behind the slabs would be very unlikely to exert sufficient force to push over a paving slab.*
- 5.7 The Leyland Cypress T4 is considered too large and oppressive for the garden, and has excessive height to width ratio. Its position on sloping ground increases risk of it falling. *Comment: These issues are largely already addressed at 5.4 and 5.5 above, in respect of T3. Leyland*

Cypress is by nature of relatively columnar form i.e. tall and narrow; this is simply the characteristic appearance of the species and reflects the natural variation amongst trees.

- 5.8 The owners contend that the TPO should be revoked on human rights grounds, suggesting that protecting the public amenity value of trees through making a TPO supersedes the interests of the property owner. *Comment: A TPO is just that: a form of control over how a property owner may otherwise choose to manage their trees. But in common with other established controls such as planning permission and listed buildings, their use is not an infringement of human rights but a planning judgement as to what interest should be given precedence in any given situation.*
- 5.9 The owners suggest that in view of the quasi-judicial role of the local planning authority in considering objections to a TPO, the authority should follow the rules of natural justice which provide that those directly affected by a decision must have the opportunity to put their case, and this should include the wider public and not just the owners/occupiers and neighbours of the property where the protected trees are situated. *Comment: Contrary to the owners' contention, The Town and Country Planning (Trees) (England) Regulations 2012 does indeed stipulate the parties who must be informed of a newly made TPO, these being "persons interested in the land affected by the Order" and effectively those directly affected by the TPO and decisions relating to it. Land affected by the Order is defined in these Regulations as the land on which the protected trees are situated. Persons interested in the land affected by the Order are further defined as owners or occupiers of this land together with anyone else known by the authority to be entitled to cut down, lop or top the trees, or work by surface working any minerals in, on or under the land. In the current case, a copy of TPO No. SM.307 was delivered to the owner/occupier of 10 Curzon Rise, and similarly to those of an additional 5 adjacent or close by properties which may be affected by crown overhang, root undergrowth, or indeed any of the trees falling. All these properties were also recipients of an accompanying "Regulation 5 Notice" which sets out procedure for submitting objections or representations, and advises that any such received will be taken into account by the authority in considering whether to confirm the Order. There has therefore been no breach of the rules of natural justice.*
- 5.10 The owners comment on Government guidance referring to suitability of trees for inclusion in a TPO, and suggest that there are many points in the locality from where the trees included in TPO No. SM.307 cannot be seen. *Comment: No doubt true, but equally there are several publicly accessible locations in the vicinity from which these trees can be seen (public highways, public open space) and are considered to make a significant contribution to amenity, thus meeting the guidance. Whilst there is inevitably a degree of subjectivity and opinion in such matters, they are also based on professional judgement and experience. The grounds for making this Order are considered to be valid.*
- 5.11 The owners suggest that 10 Curzon Rise with its oppressive trees is not the norm for other gardens in Curzon Rise. *Comment: whether or not*

trees are typical of a locality is not relevant to whether or not they should be protected. The authority must consider that it is expedient in the interests of amenity.

- 5.12 The owners suggest that trees for inclusion in a TPO should be assessed with reference to their characteristics in relation to the local surroundings and setting. They question why only trees on the right hand (northern) side of the garden were included in the TPO. *Comment: The trees at 10 Curzon Rise are considered to contribute significantly to the well-wooded suburban character of the area. This comprises well established mature gardens containing numerous trees of many and varied ages, sizes, species and visual features, together with some highway trees and trees on public open spaces or in local urban woodlands. As is common practice, direct access onto the property of 10 Curzon Rise was not undertaken when surveying for the TPO, in order to avoid drawing attention to tree issues prior to the Order being issued. Other trees which were present in the rear garden at that time were either not considered to be of significant public amenity value or were thought to be part of a group on adjacent property, and so were not included; the majority of these non-protected trees have since been felled.*
- 5.13 The owners believe they would have a legal challenge as their right to light is affected by 3 oppressive trees on their property (T2, T3 and T4). *Comment: other than under a successful High Hedges complaint decision specific to any complaint property in question (in which the high hedge must anyway be in other ownership), no general right to light is known to exist in relation to trees. Even where a legal easement to light is successfully granted (and this is only known in relation to buildings and fixed structures etc, not to trees), this would only be applicable to identified adjacent or nearby properties over which the easement was granted, and a person's own trees (or building or fixed structure for that matter) could not infringe their own right to light in a legal sense. A TPO has no implications for right to light.*
- 5.14 In addition to the above issues raised in objection by the owners of 10 Curzon Rise, the owner/occupier of Ravenscroft, Westwood Park Avenue, has also submitted objection. His grounds of objection are generally similar to the protected tree owners' reasons, relating to: trees considered too big for their situation; risk to surrounding properties due to age and size of trees and sloping ground situation; multi-stemmed form of the Cedar T3 and risk of it failing; questionable amenity value, especially in relation to the form of the Leyland Cypress T4; suggested limited visibility of the back garden trees from the surrounding area. He also suggests that the time and administration involved in applying for and obtaining consent for work to protected trees would deter owners from doing so. *Comment: These issues have mainly been addressed above. The very nature of a TPO is a legal control measure that requires the local planning authority's consent for specified work to protected trees, so this is not a ground of objection which would be given any weight. Indeed, the owners of 10 Curzon Rise already have chosen to submit an application for consent to carry out work to the Beech T1.*

- 5.15 Furthermore, Leek Town Council has submitted objection in relation to “the two trees closest to the property” which they consider the owners should have the freedom to manage without restriction. Clarification has been obtained to confirm that this relates to the Beech T1 and the Pine T2. *Comment: As noted at Paragraph 1.1 of this report, it is now recommended that the Pine T2 be omitted from a confirmed TPO. Meanwhile retention of the Beech T1 appears not to be an issue for the tree’s owners, and the work they wish to undertake to the tree thus far has been allowed by grant of consent.*