

To the Chairman and Members of the  
PLANNING REGULATORY BOARD

Date 20<sup>th</sup> April 2017

Report of the Director of Planning and Regeneration Service

ITEM NO.    SUBJECT

1            Proposed Tree Preservation Order No 6 2016 – at land to the rear of  
Nos. 17 to 27 New Road, Firbeck, S81 8JY

Page No.  
70

**NO. OF APPENDICES: 0**

**Proposed Tree Preservation Order No 6 2016 – at land to the rear of No.s 17 to 27 New Road, Firbeck, S81 8JY**

**RECOMMENDATION:**

**That Members confirm the serving of Tree Preservation Order No. 6 (2016), at land to the rear of Nos. 17 to 27 New Road, Firbeck, Worksop S81 8JY under Sections 198 and 201 of the Town and Country Planning Act 1990.**



**Background**

The trees in question were previously covered by Tree Preservation Order (No. 1) 1952 as part of a very large Tree Preservation Order (TPO) covering much of the village of Firbeck.

An application to fell 4 No. Lime trees (identified as T11, T12, T13 and T14 on the original TPO) was submitted to the Council in March 2016 and was

subsequently part granted and part refused (reference RB2016/0361). The removal of T11 was accepted as it was noted to be dead, though the removal of T12, T13 and T14 was not accepted.

The applicant appealed the refusal and when the appeal was considered the Planning Inspectorate requested details of the confirmation of the original TPO. The Council did not have a record of the actual confirmation of the TPO from 1952 and the Planning Inspectorate allowed the Council to make a new TPO to cover these trees.

As such, a new Tree Preservation Order was made in November 2016 and placed on the 3 trees at the rear of 23 to 27 New Road, as well as an additional Lime tree at the rear of 17 New Road (TPO No. 6, 2016). All interested parties were notified and objections have subsequently been received.

Other relevant applications are listed below:

RB2000/0697: Application to fell 1 lime tree (T9) protected by KPRDC Tree Preservation Order No1 1952 – REFUSED 11/08/00

RB2006/2204: Application to fell one lime tree protected by RMBC Tree Preservation Order No. 1, 1952 – REFUSED 17/04/07 Appeal Received 11/06/07 – Dismissed 29/01/08

## **Representations**

A right to speak request has been received from a Mr Anderson of Anderson Tree Care on behalf of the applicant. His comments are summarised below.

Comments were received from the Firbeck Church Estate which notes that a tree blew down in 1980 (T10 under 1952 Order) and hit Nos. 19 & 21 New Road, and the elderly residents could have been killed if they had not been sleeping downstairs. The Estate agrees with the comments of the Council's Tree Service Manager and notes that the trees are not within the gardens of the properties in their ownership but are in the field behind.

This land is owned by the occupants of No. 1 Park Hill Drive and Anderson Tree Care acting on their behalf formally objects to the Tree Preservation Order (TPO). Mr Anderson has requested to speak at the Planning Board meeting on behalf of the applicants.

Comments raised by Anderson Tree Care are contained below:

- Mr Anderson makes a detailed analysis of the health of the four trees the subject of the TPO and concludes that they should all be removed and be replaced with a more appropriate species which is likely to cause fewer nuisances to neighbours.
- The TEMPO assessment that the Council's Tree Service Manager has made concludes that their condition is "fair/satisfactory." The Tree Service Manager has also recommended a lot of work to the trees as

part of his report on the application. This assessment is not satisfactory. The best that can be said of them is that they're in poor condition.

- Mr Anderson notes that immediate neighbours describe the trees as “dangerous” with regularly shedding dead wood. The objections appear to have been removed from the website. The Tree Service Manager has commented that the trees have “reasonable future prospects,” this is clearly not the case. They grow against a wall and the adjacent tree has been infected with a notorious decay fungi; these are not good prospects, again by any stretch of the imagination.
- The Tree Service Manager has described their life expectancy as 20 to 40 years. Mr Anderson has submitted a report which gives his appraisal of the trees. He comments that if the owners were to spend substantial sums of money pruning the trees and removing dead wood the trees may last another 20 years. However, he and his clients think that a better use of the resources would be to remove the trees and plant new ones.
- The Tree Service Manager says that the trees are clearly visible to the public; one of them is visible from the highway over the length of a garden, the other two can be seen over the houses. The fourth is in a small rear garden and equally only glimpsed from the highway. The footpath and bridleway The Tree Service Manager mentions, is some distance from the trees. By TEMPO's measure this is a “limited view only.”
- The Tree Service Manager goes on to describe them as having no redeeming features. Mr Anderson would go further, as would the neighbours; they are the last species anyone would choose to plant in this position. They're entirely unsuitable for their location. If the Tree Service Manager had pragmatically TEMPO-scored these trees they would score 1, 1, 3, & -1. They do not deserve protection and his TEMPO appraisal is clutching-at-straws.
- The previous decision by the Planning Inspectorate to refuse consent to fell T4 decision to be a poor one. One of the reasons given for dismissal was that “it could set a precedent.” This is nothing to do with amenity. A tree can only be protected because of amenity and visibility alone is not what is meant by “amenity.”
- The Council should get an independent Arboriculturist in to give a third opinion.
- This situation is clearly ridiculous and has already dragged on for 9 months. If this TPO will be put forward to Members then they need to discuss the matter rather than adopting the approach of other TPO confirmations.
- Mr Anderson concludes his report stating that one of the trees identified as Tree 1 is in a parlous condition and should be removed as a matter of urgency.

In addition, a letter of objection has been received from Mr and Mrs Cakebread who live at No. 17 New Road raising the following comments:

- All four trees (T1 – T4) can only be briefly seen from New Road and within the public realm. The trees can only be viewed at a distance from footpath No. 5 and Bridleway No. 2 which diminishes their amenity value. Additionally the number of people using these footpaths is very low which reduces their amenity value.

- All four trees are reaching the end of their life. An inspection would downgrade their value on this basis.
- Threat to property, the trees are very close to neighbouring properties, they are Listed Buildings and run the risk of being damaged by the trees, including risk of subsidence.
- The leaves falling from the trees block gutters and dead wood falling from the trees causes damage to property and to parked vehicles.
- A tree came down in the garden of No. 19 New Road, which did substantial damage to both Nos. 17 & 19 New Road. It was only because the occupants were sleeping downstairs that they were not killed at the time.
- The trees are all of a similar age and as permission has been given to remove one of the trees it casts doubt on the validity on retaining a TPO on the other four.
- The trees do not merit including within a new TPO.

### **Councils Tree Service Managers Response**

The Trees Services Manager has considered the objections raised and in response states that the main part of the objections appears to be as follows:

The TEMPO assessment overvalues the trees condition, future prospects, visibility and suitability for retention.

#### Condition and future prospects

The trees have been evaluated as being in fair condition with future prospects of 20 to 40 years (subject to further investigation), whilst the objector believes they are in poor condition with limited future prospects 10 to 20 years.

The trees contain various defects and quantities of dead wood. However, their health appears satisfactory considering their age and the apparent lack of routine maintenance in the past. At present no evidence has been provided to support the view that they are in poor condition e.g. they contain significant structural defects and / or their structural integrity is significantly impaired and, as a result, they are vulnerable to sudden partial or complete collapse. The provisional 6 months protection that a Tree Preservation Order provides acts as a holding measure to prevent the removal of significant amenity trees until any such evidence is provided to justify their premature removal. This is important where the loss of the trees will have an adverse impact on local amenity.

The extent of pruning recommended by the Tree Service Manager's in response to the application to fell them under application RB2016/0361 included the following:

"The removal of dead wood and dense small diameter shoots from around the base of their main stems. I do not agree that this is "a lot of work" and "unsatisfactory" as stated by the agent. The removal of dead wood was

recommended to help minimise the risk of personal harm or damage to property. This type of work is normally accepted as exempt from the normal application procedures for reasons of safety. The pruning of the basal shoots was also recommended to help allow a detailed inspection of the main stem to be completed to help determine if any of the trees contain any significant defects and / or associated decay and the level of remedial action required to satisfactorily resolve them.”

In addition to the above, whilst the trees are positioned close to boundary walls, the Tree Service Manager stated that he was not aware of any evidence being provided to confirm that they are the cause or the main contributory factor to any disturbance to them and / or that the walls cannot be rebuilt without requiring the removal of the trees concerned. He also stated that he was not aware of any evidence being provided to confirm that any of the trees are involved with any current difficulties of structural damage to the dwellings.

#### Visibility

The TEMPO evaluation records the trees as “large trees clearly visible from New Road and Firbeck footpath No 5 and bridleway No 2”. The objectors state that there is only limited visibility of the trees and the footpath and bridleway are some distance from them that diminishes their amenity value.

T1 to T3 are clearly visible from between 19 to 23 New Road and over the side garden at 27 New Road and the upper parts of T4 are visible above the roof line of 17 New Road. In addition they are all clearly visible from the public footpath and bridleway, albeit at a distance. As a result their removal will no doubt result in a significant reduction of local amenity in the area.

#### Unsuitable for their location

The TEMPO evaluation records the trees as having no additional redeeming features. The objectors state they are entirely unsuitable for their location. This appears to be due to their position in relation to the adjacent properties and the amount of seasonal debris from them.

The concerns for personal harm and / or damage to property should the trees partially or completely collapse are fully understood and appreciated. This is not unusual where residents live within falling distance of large mature trees. However, no evidence has been provided to substantiate these concerns at this time.

The difficulties of seasonal debris are also fully appreciated and understood. The clearance of such debris is to be expected where properties are in close proximity to trees and is considered part of general household maintenance works, as indicated as part of a previous appeal decision by an independent Government Inspector. The sap secreted by insects feeding on the leaves of the trees may be regarded by residents as a nuisance, but the extent can vary from year to year depending on aphid populations and it can be removed with warm soapy water. The use of car covers can also help to reduce this type of

difficulty if it is not possible to park a vehicle away from a tree during the months when it is in leaf.

Letter from Firbeck Church Estate

The letter of support for the new Tree Preservation Order states the site and trees have been inspected and they concur with the Council's conclusions to protect the trees. As owners of some of the properties affected by the trees, this is welcomed.

**Conclusions**

No evidence has been provided to substantiate the reasons not to confirm the Order.

It is therefore considered that the main objections to the Order have been carefully assessed and the Order has been made in accordance with Government guidelines. In this instance, it is recommended the Order is confirmed without modification.