

Date: 6th March 2023

Agenda Item: 4

Contact Officer: Andrew Watkins

Tel Number: 01543 308185

Email: Andrew.watkins@lichfielddc.gov.uk

Key Decision? NO

Local Ward Members Councillor David Salter Shenstone Ward

PLANNING COMMITTEE

1. Executive Summary

- 1.1 To seek members decision regarding the confirmation of Tree Preservation Order no 2022/00472/TPO

2. Recommendations

- 2.1 That the Committee confirm the Tree Preservation Order without modification.

3. Background

- 3.1 A tree preservation order was made on 30th of September 2022 in respect of trees within the boundary of both Vine Cottage, Church Road, Shenstone and the grounds of Fox and Hounds Public House, Main Street, Shenstone. The grounds for the order are as follows:

A recent Section 211 Notice notified the Authority that works to the trees upon both addresses was to be undertaken. It was considered that the works would be detrimental to the health of the trees and greatly reduce the amenity value of the specimens, and therefore could not be supported.

The TPO documents are located at Appendix A at the end of the report and can also be found via <https://lichfielddc.ezyportal.com/>

- 3.2 One objection to the order was received and raised a number of points. Correspondence was entered into regarding the objection, but the objection has not been negotiated away.
- 3.3 The objections are detailed below (essentially in the form of previous communication with the objector) and are dealt with in context, for ease of reference:

Objection Point A

Following advice from a tree surgeon (Middleton Trees) I submitted an application to carry out work (trees in a conservation area) to trees T2 & T3. Your tree officer (Andrew Watson) subsequently visited the site and we discussed the options. We agreed & were happy to re-submit alternative proposals to those of the initial application:-

1. Omit pollarding but carry out crown reduction (approx. 2m) to T2 to prevent interference with crown of T1.

2. Carry out further investigation of tree T3 to ascertain whether twin stem had 'included' ? bark at fork. To achieve this examination, it would require removal of ivy, discussions/approval with tree owners i.e. Fox & Hounds PH, plus a revisit to be arranged with Middleton Trees to look, discuss and contact LDC with new proposals.

Objection Point A Response

A site visit was undertaken on 20th of September 2022, to assess the trees from various vantage points to see what the visual impact would be should the works within the S211 Notice be undertaken.

The works to T2 (Beech) would reduce the height of this tree to around three metres from ground level, in effect leaving a stem devoid of branches.

The removal of T3 (Sycamore) did not seem warranted, given the condition of the tree and level of vigour at the time of the site visit.

During the site visit, the potential works formed part of discussions to see if these works could be changed in such a way lessen effect upon the trees. The objector mentioned that the large mature Sycamore (T1 of the new TPO) to the rear of the garden, was a prized specimen, and that the pollard to T2 was to remove the conflict between T1 and T2. It was suggested that minimal lateral reductions could be performed to the canopy of T2 to reduce the impact of greater works.

The pollard to the Beech (T2) would effectively remove all live canopy of the tree and the tree would not re-generate from this new form and would eventually fail and require removal.

With regards to T3 and whether the condition of the tree had been assessed: it was reported that other than a visual assessment by the agent, no further investigation had been performed. It was suggested that, with the agreement of the neighbouring tree owner, careful removal of the ivy would allow clearer assessment of the point of bifurcation, thus confirming the presence of included bark and therefore a potential inherent weakness.

It was agreed that the agent would be in contact to arrange for the ivy removal, investigation and communicate findings to LDC in due course.

Objection Point B

The very next we heard from LDC was the formal TPO notice Ref; 2022/00472/TPO which arrived before any of the above had being carried out.

We also had a phone call on 1st.Oct. from Middleton Trees (Will) to say he'd received an email from LDC advising a TPO had been made on all 3No.trees. (T1, T2 & T3). He also mentioned a previous and recent email from LDC, that I understand was advising if action wasn't taken a TPO would be forthcoming. I did not receive any such email, hence the TPO coming completely out of the blue. As the applicant I would have thought I would have received any correspondence NOT the tree surgeon.

Objection Point B Response

The Section 211 Notice or Notification of works within Conservation Area was Validated on 25th August (2022) by LDC with a Target Date of 6th October (2022) at which time the LPA had to either serve a TPO upon the trees within the notification or send a decision notice allowing for the works to continue as per the supplied specification.

It has been confirmed that a standard letter was sent to the objector detailing the process above on the 25th of August 2022 and that the objector was the sole party to receive communication in regard to the S211 Notice. The email sent to the tree surgeon was sent to inform them, in their capacity as a contractor, that the trees were now protected by a TPO.

The TPO was hand served on the 30th of September to Vine Cottage, the neighbouring Public House and other neighbouring interested parties.

Objection Point C

I think Andrew Watson's (LDC) initial visit was on or around the 27th Sept. 2022. My application 22/01252/TRCA was registered on the 23rd. Aug. 2022, This visit therefore was on, or around, week 5, of the 6 weeks determination period. This left no realistic time to carry out the investigations & consultations, as outlined above, to resubmit proposals and having not received any subsequent warning or advisory email/letter from LDC with regard to withdrawing the initial application I feel it is rather unfair to formally enforce a TPO on trees T1,T2 & T3.

I am not a professional tree surgeon or Council tree officer and do not normally make applications of this nature. I endeavoured to carry out the required procedure in the correct way and I consider I was courteous and pleasant to all parties, with a view to achieving the best result for all to be comfortable with.

If the TPO remains perhaps you may be able to advise if the tree work can still be achieved through an application for works to trees with TPO's?

Objection Point C Response

The site visit was around three weeks after the date of Validation, allowing a further two and a half weeks before a decision was required to TPO the trees or not. Given the previously mentioned amenity value of the trees and the fact that no amended specifications were presented, a decision was made to protect the three trees by way of a TPO.

Should the TPO be confirmed (made permanent) then applications can be submitted for works to the trees.

- 3.4 Applications can be made and determined under the TPO (if confirmed) and if those applications are refused by Lichfield District Council then the applicant has recourse to appeal to the Planning Inspectorate (PINS).
- 3.5 As per 2.1 As per 2.1 and taking the above into account it is recommended that Committee confirm the order without modification.

| | |
|---|--|
| Alternative Options | 1. The Committee may choose not to confirm the Tree Preservation Order. |
| Consultation | 1. There is a duty to consult the owner of the affected property and all neighbouring properties (who may have common law rights to works on trees protected by the TPO) when the TPO is made. A copy of the order is served on all affected properties and owners/occupiers are invited to comment or object within 28 days of the date of the order. |
| Financial Implications | 1. Tree Preservation Orders make provision for the payment by the local Planning Authority, of compensation for loss or damage caused or incurred, within a twelve-month period from the date of their decision, as a result of their refusal of any consent under the Tree Preservation Order or their grant of consent subject to conditions. There are no financial implications in the confirmation of a Preservation Order. |
| Approved by Section 151 Officer | Yes/no* |
| Legal Implications | 1. There is a potential for High Court challenge (after confirmation), however this is mitigated by ensuring that the TPO is within the powers of the Act and that the requirements of the Act and Regulations have been complied with in relation to the TPO. |
| Approved by Monitoring Officer | Yes/no* |
| Contribution to the Delivery of the Strategic Plan | 1. Assists in ensuring that Lichfield remains a clean, green and welcoming place to live. |
| Equality, Diversity and Human Rights Implications | <p>1. The proposals set out in the report are considered to be compatible with the Human Rights Act 1998. The proposals may interfere with an individual's rights under Article 8 of Schedule 1 of the Human Rights Act, which provides that everyone has the right to respect for their private and family life, home and correspondence. Interference with this right can only be justified if it is in accordance with the law and is necessary in a democratic society. The potential interference here has been fully considered within the report and on balance is justified and proportionate in relation to the administration of the tree preservation order.</p> <p>2. There are not considered to be any specific implications in relation to the Public Sector Equality Duty.</p> |
| EIA logged by Equalities Officer | Yes/no* |
| Crime & Safety Issues | 1. There are no specific crime and safety issues associated with 2022/00472/TPO |
| Environmental Impact (including Climate Change and Biodiversity). | 1. If a tree preservation order is not confirmed then trees may be lost. This may negatively impact on the potential within the District for carbon capture and delay progress towards net zero. |

| | |
|----------------------------------|---|
| GDPR / Privacy Impact Assessment | 1. The requirements of GDPR are considered to be met both in the service and administration of the TPO and the presentation of the information in the report. |
|----------------------------------|---|

| | Risk Description & Risk Owner | Original Score (RYG) | How We Manage It | Current Score (RYG) |
|---|---|---|--|---------------------|
| A | High Court Challenge (after confirmation) LDC | Green | Ensuring that the TPO is within the powers of the Act and that the requirements of the Act and Regulations have been complied with in relation to the TPO. | Green |
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| | | Background documents See end of report | | |

| | |
|--|---|
| | Relevant web links https://lichfielddc.ezyportal.com/ |
|--|---|

Appendix A

2022/00472/TPO AS SERVED 30/09/2022

SCHEDULE

SPECIFICATION OF TREES

Land at Vine Cottage, Church Road, Shenstone

Tree Preservation Order No 2022/00472/TPO

**Trees Specified Individually
(encircled in black on the map)**

| Reference on Map | Description | Situation |
|-------------------------|--------------------|--|
| T1 | Sycamore, | Grid Ref: SK-10917-04527 |
| T2 | Beech spp, | Grid Ref: SK-10922-04522 |
| T3 | Sycamore, | Tree within rear car park of Fox and Hounds Public House, adjacent to Church Road, Shenstone Grid Ref: SK-10923-04517 |

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

| Reference on Map | Description | Situation |
|-------------------------|--------------------|------------------|
| NONE | | |

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

| Reference on Map | Description | Situation |
|-------------------------|--------------------|------------------|
| NONE | | |

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

| Reference on Map | Description | Situation |
|-------------------------|--------------------|------------------|
| NONE | | |

TOWN AND COUNTRY PLANNING ACT 1990

The Lichfield District (Shenstone) Tree Preservation Order 2022/00472/TPO

Land at Vine Cottage, Church Road, Shenstone

The Lichfield District 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 Lichfield District (Shenstone) Tree Preservation Order (2022/00472/TPO)

Interpretation

2.— (1) In this Order “the authority” means the Lichfield District 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, uprooting, 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 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.

30th September 2022.....

Signed on behalf of the Lichfield District Council



Authorised by the Council to sign in that behalf



TPO Ref: 2022/00472/TPO
Land at Vine Cottage, Church Road, Shenstone

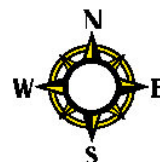
Lichfield District Council

Lichfield
district council

The scale shown is approximate and should not be used for accurate measurement.

| | |
|-------|------------|
| Scale | 1:750 |
| Date | 29/09/2022 |

Reproduced from the Ordnance Survey mapping with the permission of the controller of Her Majesty's Stationery Office



This Order was confirmed by Lichfield District Council without modification

on the

Signed on behalf of the Lichfield District Council

.....

Authorised by the Council to sign in that behalf

This Order was confirmed by Lichfield District Council subject to the modifications indicated in red ink,

on the

Signed on behalf of the Lichfield District Council

.....

Authorised by the Council to sign in that behalf

A decision not to confirm this Order was taken by Lichfield District Council

on the

Signed on behalf of the Lichfield District Council

.....

Authorised by the Council to sign in that behalf

This Order was varied by Lichfield District Council

on the

by a variation order under reference number , a copy of which is attached.

Signed on behalf of the Lichfield District Council

.....

Authorised by the Council to sign in that behalf

This Order was revoked by Lichfield District Council

on the

Signed on behalf of the Lichfield District Council

.....

Authorised by the Council to sign in that behalf