

Tree Preservation Order No 2023/00481/TPO

Cabinet Member: Cllr Mike Wilcox
Date: 4th of September 2023
Agenda Item:
Contact Officer: Gareth Hare
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Key Decision? NO
Local Ward Members: Cllr Keith Vernon, Colton and the Ridwares Ward

Lichfield
district council

**PLANNING
COMMITTEE**

1. Executive Summary

1.1 To seek members decision regarding the confirmation of Tree Preservation Order no 2023/00481/TPO

2. Recommendations

2.1 That the Committee confirm the Tree Preservation Order without modifications.

3. Background

3.1 A tree preservation order was made on the 21st of March 2023 in respect of trees at 'Wyevern', Bellamour Way, Colton, WS15 3LN:

The tree preservation order was made in response to a section 211 (Conservation Area notification) for the felling of two Weeping Willow trees. The trees are visible and prominent from Bellamour Way and surrounding residential properties. The trees provide amenity to this area of Colton and are considered to have considerable safe, useful life expectancy

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 and a site visit was carried out on the 5th of July 2023. However, the objection has not been negotiated away.

3.3 The objections are detailed below and are dealt with in context for ease of reference:

Summary of objections:

- a. The TPO omits any reference to the reasons given for felling in the Section 211 notice
- b. Damage to the driveway
- c. Raising of the floor level of the garage
- d. Concerns regarding the trees leaning
- e. Proximity to property

Objection a.

The TPO omits any reference to the reasons given for felling in the Section 211 notice

Response to objection a.

When making a TPO, a Local Authority is obliged to set out their reasons for making the order. This is communicated within the regulation 5 notice (in the form of a letter) that accompanies the TPO. In this instance the reasons given were:

A recent S211 Notice has detailed the removal of the trees within this TPO. The trees are visible and prominent from Bellamour Way and surrounding residential properties. The trees provide amenity to this area of Colton and are considered to have considerable safe, useful life expectancy.

The reasons for making the order include that a S211 notice was submitted in respect of the removal of the trees as this is relevant to the Council's making of the order. However, the reasons for the initial submission of the notice are not relevant in terms of making the order and are therefore not included.

For completeness and ease of reference for the purposes of this report, the reasons given within the Section 211 notice (23/A0033/TCA) were:

2 Willows- Fell because of close proximity to house, damage to driveway surface, damage to pathway surface near front door of property, potential damage to property (roots and falling), root ingress to drains, likely rot (a recently felled, nearby Willow of similar age had a rotten core, risk of branches falling on parked vehicles, a large 10" diameter branch fell onto the drive some three years ago).

Objection b.

b. Damage to the driveway

Response to objection b.

T1 and T2 of the order are sited close to the edge of the driveway to the property. The driveway is cracked in some locations where there are roots beneath and some of the edging stones have been displaced. Similarly, some cracking is noted on the pedestrian pathway to the front door which is of the same material and level as the drive. Cracking and displacement of driveways and paths is commonly seen where trees are in close proximity. In most instances the cracking or lifting of the surface is not sufficient to make the driveway structurally unfit or difficult to use. It is appreciated that cracking or lifting of the surface can be unsightly and localised repair or re-laying of surfaces can be accomplished where aesthetic improvements are desirable. In certain instances, roots directly beneath the surface of the drive can be damaged by the pressure imposed by vehicles. This can result in scar tissue building up due to repeated damage and defects being exacerbated. In these instances, it is often possible to undertake localised root pruning to remove the damaged root and then repair the drive. In the case of the subject property, the cracking and lifting of the drive noted at the time of the site visit wasn't sufficient to warrant re-surfacing or repair.

Objection c.

c. Raising of the floor level of the garage

Response to objection c

A site visit was carried out on the 5th of July. Concerns had been raised that the floor of the garage was lifting and that the cause was the presence of a root from the Willow trees. A trial pit was excavated down to circa 600mm depth immediately in front of the garage door. The pit was located in line with the area of the floor which was thought to be lifting and making contact with the centre of the bottom of the garage door. Immediately below the concrete surface and down to a depth of approximately 450mm-500mm was lightly consolidated fill/rubble. Only very fine fibrous roots were found. Below this level was brown clay with further fibrous roots and occasional roots of around 10mm diameter. However, there were no roots of a size or in a location capable of causing direct displacement. Direct displacement is the mechanism by which roots or the stem of a tree, displace structures via incremental growth.

Objection d.

d. Concerns regarding the lean of the trees

Response to objection d.

Concerns were raised due to the lean of the trees. Although the trees are leaning, this is generally not a cause for concern if the lean is long established as with the trees in question. Trees exhibit leaning behaviour for a number of reasons, these include: poor support at planting which results in the tree stabilising at an angle, phototropism, where the tree grows towards the sun or lighter part of the plot, previous destabilisation i.e., storm damage where the tree has been partially displaced and then re-stabilised. It is not clear why the subject trees lean. However, the lean appears to be long established and the trees stable, judging from an examination of their form and therefore this is not determinative in relation to reasons for removal. The contrary position would be if a tree which had previously been growing vertically, was displaced from the vertical. This is usually accompanied by displacement of soil or other surfaces around the base of the tree, and the periphery of the major roots. However, this is not the case with the subject trees.

Objection e

e. Proximity to property

Response to Objection e.

Concerns have been raised regarding the proximity of the trees to the property. The objector's position is that the trees are far too close to the property. Whilst it is understandable that concern may be caused by large trees close to properties, the perception of such trees by occupants varies widely. The authority must balance the views of the tree owners or occupants of a property -where those views are averse to the trees in question- with the responsibility to protect the amenity the trees provide to the area.

Conclusion in response to objections

The objections to the order have been carefully considered and detailed investigation carried out to assess the concerns relating to objection C in particular. However, there was no evidence found which supported the concerns raised in objection C and the points raised in the other objections are not felt to outweigh the amenity value of the trees in question.

- 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 and taking the above into account it is recommended that Committee confirm the order with the modifications detailed.

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 work 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 direct 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.
Legal Implications	1. There is the 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.

Contribution to the Delivery of the Strategic Plan	1. Assists in ensuring that Lichfield remains a clean, green and welcoming place to live.
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Equality, Diversity and Human Rights Implications	<ol style="list-style-type: none"> 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. There are not considered to be any specific implications in relation to the Public Sector Equality Duty.
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Crime & Safety Issues	1. There are no specific crime and safety issues associated with 2023/00481/TPO
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Environmental Impact	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.
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GDPR	1. The requirements of GDPR are considered to be met both in the service and administration of the TPO and the presentation of information in the report.
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	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
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	Relevant web links https://lichfielddc.ezyportal.com/
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TOWN AND COUNTRY PLANNING ACT 1990

The Lichfield District (Colton and the Ridwares) Tree Preservation Order 2023/00481/TPO

Land at Wyevern, Bellamour Way, Colton

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 (Colton and the Ridwares) Tree Preservation Order (2023/00481/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.

21st March 2023.....

Signed on behalf of the Lichfield District Council



Authorised by the Council to sign in that behalf

SCHEDULE

SPECIFICATION OF TREES

Land at Wyevern, Bellamour Way, Colton

Tree Preservation Order No 2023/00481/TPO

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

Reference on Map	Description	Situation
T1	Weeping Willow,	Grid Ref: SK-04895-20508
T2	Weeping Willow,	Grid Ref: SK-04904-20506

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

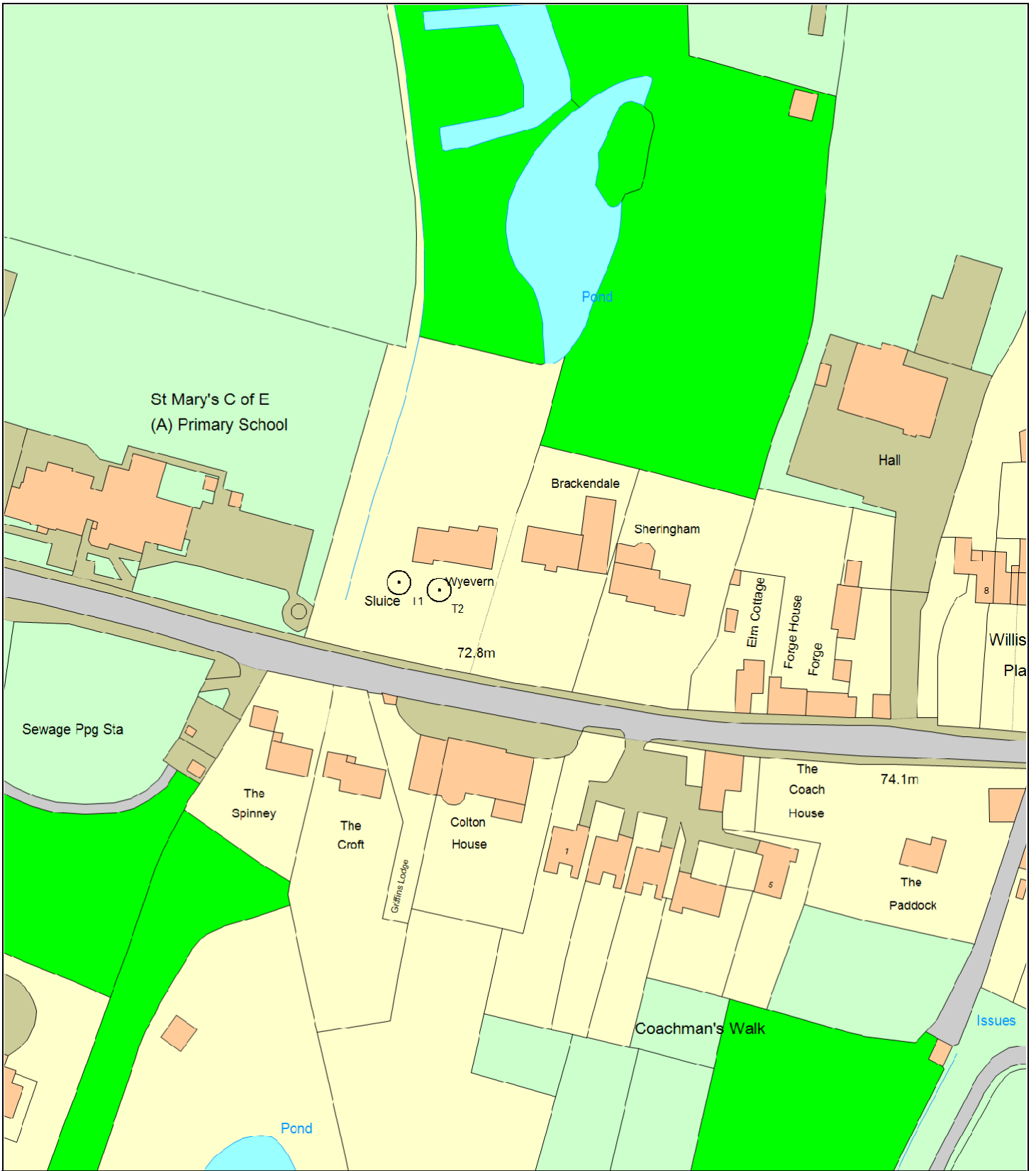
Reference on Map	Description	Situation
NONE		

**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		



TPO Ref: 2023/00481/TPO
Land at Wyevern, Bellamour Way, Colton

Lichfield District Council



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

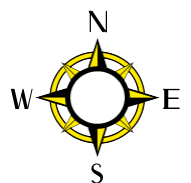
Scale

1:1250

Date

20/03/2023

*Reproduced from the Ordnance Survey mapping with the permission of the controller of Her Majesty's Stationery Office
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 Licence No:100017765 Dated 2020*



This Order was confirmed by Lichfield District Council without modification on the

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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

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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

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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