

Tree Preservation Order No 2023/00482/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: Stowe Ward: Cllr Hugh Ashton, Cllr Russ Bragger, Cllr Ann Hughes

Lichfield
district council

**PLANNING
COMMITTEE**

1. Executive Summary

1.1 To seek members decision regarding the confirmation of Tree Preservation Order no 2023/00482/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 28th of March 2023 in respect of trees at Lichfield Cathedral School, The Palace, The Close, Lichfield, WS13 7LH

The tree preservation order was made in response to a section 211 (Conservation Area notification) for the felling of two English Walnut trees and two Hazel trees within the school grounds (23/A0044/TCA). The removal of the Hazel trees was not objected to. The trees are visible from Gaia Lane and The Close, are in view of visitors, staff and pupils attending the site and also visible to surrounding residential properties. The trees provide amenity to this area of Lichfield 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 (only in relation to T2) and raised a number of points. Correspondence was entered into regarding the objection and a site visit was carried out on the 24th of March 2023 along with further correspondence. However, the objection has not been negotiated away.

3.3 The objections are summarised below with the full text of the objection at Appendix B. The points are dealt with in context for ease of reference:

Summary of objections:

- a. The risk of walnut exposure to one child in particular who has a severe nut allergy
- b. The solution proposed in mitigation does not eliminate 100% of the risk
- c. The health and safety of pupils with nut allergies is at risk if the tree remains
- d. Unnecessary anxiety and stress to families of children at risk

- e. The tree is not visible from Cathedral Close and doesn't provide amenity to visitors, staff or pupils at the school.

Objection a.

- a. The risk of walnut exposure to one child in particular who has a severe nut allergy

Response to objection a.

Evidence has been provided by the school of the severity of the allergy and the likely outcome if exposed. This is described as an irreversible effect. Clarification was sought by the Council on the mode of exposure i.e. whether the risk is from exposure of any kind or, whether the risk is from ingestion only and what quantity of material would cause a reaction. No clarification on these points was offered.

The documentation from the NHS Trust cites section 100 of the Children and Families Act 2014: <https://www.legislation.gov.uk/ukpga/2014/6/section/100/enacted> Paragraph 1 of section 100 states: (1)The appropriate authority for a school to which this section applies must make arrangements for supporting pupils at the school with medical conditions.

Reference is made to the statutory guidance, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/803956/supporting-pupils-at-school-with-medical-conditions.pdf the aim of which is to: 'ensure that all children with medical conditions, in terms of both physical and mental health, are properly supported in school so that they can play a full and active role in school life, remain healthy and achieve their academic potential.' In terms of the interaction between the pupil and the tree, section 14 of the guidance relates to individual healthcare plans and requires a governing body to consider the triggers for the medical condition as part of the overall assessment. This element may also be taken into account as part of a wider policy for supporting pupils with medical conditions.

The guidance also cross references the Health and Safety at Work Act (1974) (section 2). <https://www.legislation.gov.uk/ukpga/1974/37/section/2> The section provides at 2 (2) (d) that 'so far as is reasonably practicable as regards any place of work under the employer's control, the maintenance of it in a condition that is safe and without risks to health and the provision and maintenance of means of access to and egress from it that are safe and without such risks;'

In considering the risk imposed by the tree to the child in question and to other pupils with relevant allergies, the abovementioned legislation and guidance has been taken into account. In addition, although the National Tree Safety Group guidance 'Common Sense Risk Management of Trees' <https://cdn.forestresearch.gov.uk/2011/12/fcms024.pdf> is principally concerned with the management of tree risk in a physical sense i.e. the risk from trees breaking or falling, the underpinning concept of the document is applicable in this case:

the NTSG believes that one fundamental concept should underlie the management of risks from trees. it is that the evaluation of what is reasonable should be based upon a balance between benefit and risk. this evaluation can be undertaken only in a local context, since trees provide many different types of benefit in a range of different circumstances.

The benefits afforded by the tree are considered within the reasons for the TPO and are defined in terms of amenity as required by the legislation and guidance. The tree in question is visible from the Close, Gaia Lane, and surrounding properties. It is also in view of pupils, staff and visitors to the school. It is noted as having considerable safe, useful life expectancy so would be expected to have a substantial future as well as present contribution to amenity. T2 is a mature Walnut of approximately 70 years old is an excellent specimen with good form and in good physiological condition. As such, the tree could be expected to live to around 200 years and may not yet have reached middle age. Other benefits such as those afforded to or by wildlife, biodiversity, particulate interception and shade are not caught by the legislation and therefore not detailed in the reasons for the order.

In the view of the Council, the amenity and other benefits afforded by T2 are substantial and capable of being maintained for a considerable period due to the longevity of the species.

The risk imposed by the tree in terms of the fruit (Walnuts) is seasonal. T2 is sited adjacent to a hard surfaced playground which the subject child is obliged to use whilst in their current stage of schooling. Discussions have been undertaken with the school to determine what measures could be put in place to address the risk and reduce it to a reasonable level (as low as reasonably practicable) whilst the child with the severe allergy is within the relevant part of the school. Discussions centred around the removal of nuts from the playground on a regular basis, the use of temporary barriers and the potential for the nuts to be picked prior to them falling onto the playground.

Other measures to reduce risk to the pupil are those based around self-awareness and the awareness of staff and other pupils, of the allergy risk. The pupil is aware of their condition and will have knowledge of how to avoid contact with nuts and nut products. In addition, staff, including maintenance staff, will be aware of the potential risk from the Walnuts and will already be managing that risk in order to safeguard the child. Sweeping the playground to clear the nuts in advance of children using the space is a reasonable precaution.

Objection b.

b. The solution proposed in mitigation does not eliminate 100% of the risk

Response to objection b.

The solution proposed in mitigation is the use of a mobile elevating work platform (MEWP) to allow access to the crown of the tree to pick the unripe fruits before they fall. The opinion of the school is that this method would be unsuccessful as it would not eliminate 100% of the risk. However, this method -which would remove the vast majority of the nuts- in combination with other safeguarding measures such as sweeping the playground to remove any nuts that may have been missed in the picking operation, plus the awareness of staff and pupils, would significantly reduce the risk imposed by the walnuts to the child and other site users to a level which is as low as reasonably practicable.

It should also be noted that there is some inconsistency in the approach of the school if the desired outcome is to eliminate risk by 100%.

As noted at 3.2, the objection to the order was only raised on the basis of T2. T1 of the order is also a Walnut within the grounds of the school. This tree will also produce walnuts which could then come into contact with the pupil or pupils. In addition, there are other trees within the grounds which produce nuts and could therefore induce a reaction. G1 of 1985/19101/TPO are a group of Beech adjacent to Dimble House and overhang a portion of the school grounds. Beech produce mast with viable nuts in vast quantities in mast years. However, these trees have also not been raised as an issue.

Objection c.

c. The health and safety of pupils with nut allergies is at risk if the tree remains

Response to objection c

The responses to objections a and b highlight the circumstances surrounding the case and detail control measures which safeguard the pupils using the school facilities whilst retaining the tree.

Objection d.

d. Unnecessary anxiety and stress to families of children at risk

Response to objection d.

It is appreciated that the families of children at risk of allergic reactions will have concerns regarding the retention of the tree. However, those families' concerns could be addressed via the control measures detailed in the foregoing responses and the attendant reduction in risk to their children.

Objection e

e. The tree is not visible from Cathedral Close and doesn't provide amenity to visitors, staff, or pupils at the school.

Response to Objection e.

Photographs of the tree show it to be visible from the Close where it affords amenity to visitors and residents. T2 can be viewed from many of the schools' buildings and from points within the grounds. It contributes to the verdant character of the schools setting. It is accepted that -as with all trees- there may be a variety of opinions on what the tree contributes to its surroundings. However, it is unlikely that, given its size and prominence, the tree is entirely unappreciated for the amenity it provides to visitors, staff, or pupils.

Conclusion to objection responses

The objections have been carefully considered in light of the evidence presented and the potential mechanisms for managing the risk. Relevant legislation has been examined and taken into account.

On the basis of the evidence and the available options for managing the risk, it is the view of the Council that the pupils of the school can be successfully safeguarded whilst retaining the tree.

- 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.

Equality, Diversity and Human Rights Implications	<ol style="list-style-type: none"> 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. 2. There are not considered to be any specific implications in relation to the Public Sector Equality Duty.
Crime & Safety Issues	<ol style="list-style-type: none"> 1. There are no specific crime and safety issues associated with 2023/00482/TPO
Environmental Impact	<ol style="list-style-type: none"> 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	<ol style="list-style-type: none"> 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.

	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 (Stowe) Tree Preservation Order 2023/00482/TPO

Land at Lichfield Cathedral School The Palace, The Close, Lichfield

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 (Stowe) Tree Preservation Order (2023/00482/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.

28th 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 Lichfield Cathedral School The Palace, The Close, Lichfield

Tree Preservation Order No 2023/00482/TPO

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

Reference on Map	Description	Situation
T1	Common Walnut,	Grid Ref: SK-11564-09920
T2	Common Walnut,	Grid Ref: SK-11441-09794

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

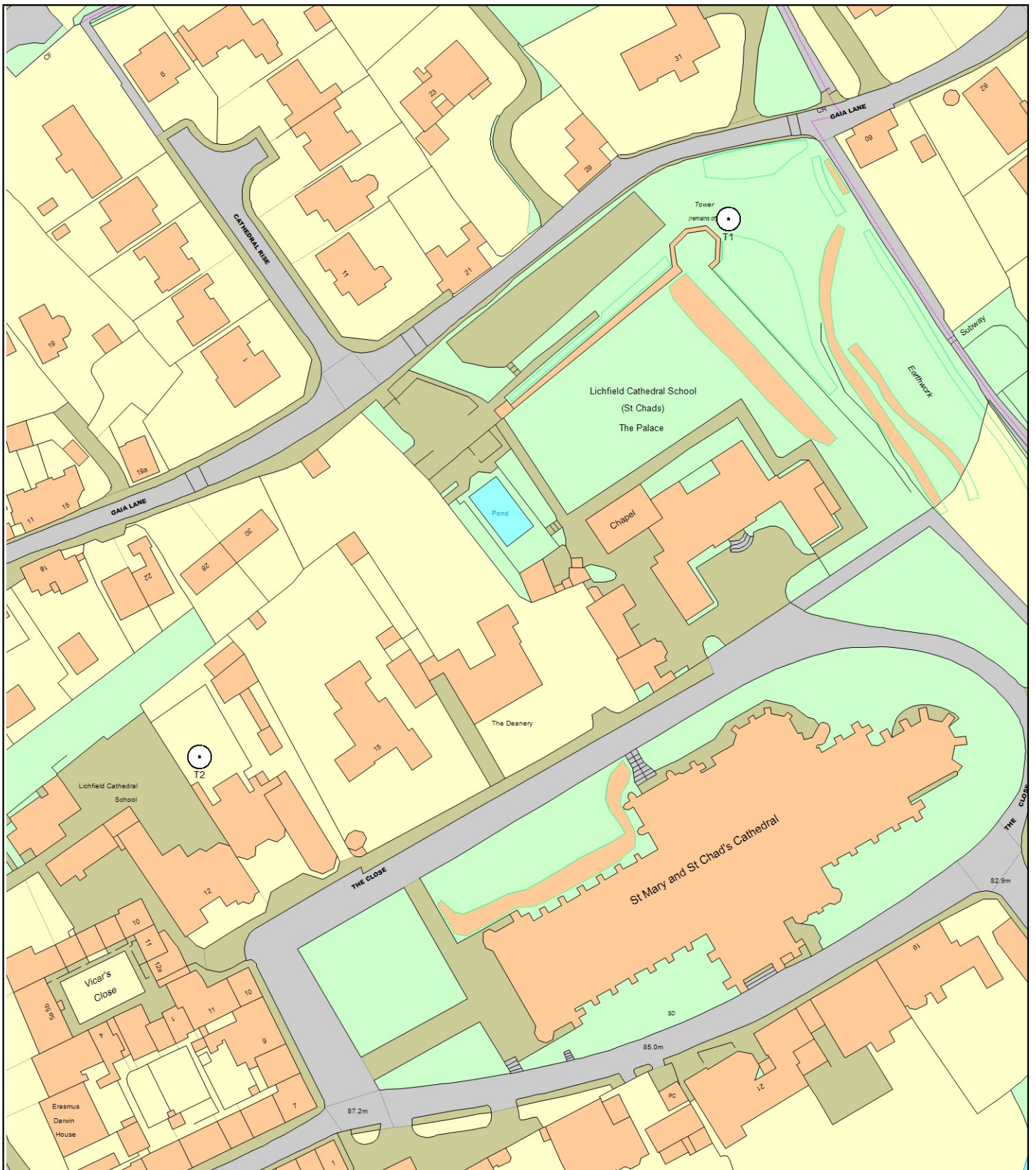
Reference on Map	Description	Situation
NONE		

**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: 2023/00482/TPO
Land at Lichfield Cathedral School The Palace, The Close, Lichfield

Lichfield District Council

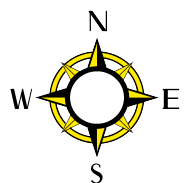


The scale shown is approximate and should not be used for accurate measurement.

Scale 1:1250

Date 27/03/2023

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