

Tree Preservation Order No 423-2018

Report of the Cabinet Member for Economic Growth, Environment & Development Services

Date:	11/02/2019
Agenda Item:	5
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Key Decision?	NO
Local Ward Members	Cllrs David Leytham, Rob Strachan, Alan White



1. Executive Summary

- 1.1 To seek members decision regarding the confirmation of Tree Preservation Order 423-2018 at 81 Hints Road, Hopwas, Tamworth, Staffs, B78 3AB

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 27th of September 2018 in respect of one Oak tree to the rear of 81 Hints Road, Hopwas, and abutting the Birmingham and Fazeley Canal. The grounds for the order are as follows:

The tree specified in this order stands within land adjacent to 81 Hints Road, Hopwas, Tamworth, Staffordshire. It is a mature Oak and stands adjacent to the Birmingham and Fazeley Canal and to the rear of 81 Hints Road, Hopwas. The tree is prominent in views along the canal and towpath, from Bells Bridge on Hints Road and in views from Hints Road N/E towards the canal. The tree is mature, well-formed and is likely to have a long life expectancy. A section 211 notice has been served notifying the Council of the proposed felling of the tree. The proposed works would remove an important tree from the landscape and any amenity it provides. It is not possible to refuse a Section 211 notice and therefore the only option the Council has to secure the retention of the tree is to serve a preservation order. On the above basis it is considered expedient to serve a tree preservation order.

The TPO documents are at **Appendix B**.

- 3.2 A number of objections to the order were received from several parties on a range of grounds. A site visit was held on the 25th of October 2018 in order to discuss the objections and examine the tree.
- 3.3 The objections are summarised below and dealt with in context for ease of reference:-

1. Close proximity of tree to the properties along Hints Road.

The tree is 15m from the rear of 79 Hints Road and 16.8m from the rear of 81 Hints Road. In the unlikely event that the tree were to fail in its' entirety in the direction of the properties then the very top of the tree would contact the buildings. However, on inspection the tree exhibited no signs of instability and the probability of such a failure is considered low. This low probability would also apply to the issues raised about a lightning strike.

2. Fears of falling branches/debris

There is a possibility (as with any tree) for branches to be shed for a variety of reasons. As highlighted at point 1, there is substantial separation between the tree and the rear of the properties so any falling material would be most likely within the gardens. During the site visit the crown structure was observed and no immediate signs of probable failure points were seen. The probability of branch failure is considered to be low. Deadwood accumulates within trees as part of normal growth processes. The tree in question was harshly pruned many years ago and is in the process of shedding duplicated material which it no longer requires. Deadwood may be removed without consent at any time and it is suggested that this is carried out on a periodic basis.

3. Sunlight/daylight to gardens/houses.

The tree stands due west of the properties. As such it will intercept sunlight/cast shade to varying degrees throughout the year in the latter part of the day. In addition it will reduce diffuse daylight to the plots. The location of the tree and the size/length of the gardens mean that for much of the day light levels are not constrained and the properties and gardens will receive sunlight/daylight. Please see aerial photograph at **Appendix A** for illustration. Some minor crown lifting works could be accomplished with little impact on the tree in order to increase light levels to the gardens in the latter part of the day.

4. Leaf fall/leaf collection/blocking of gutters and associated maintenance requirements.

Various issues are identified relating to the fall of leaves from the tree. These include, the frequency of leaf collection required, blocking of gutters, damage to lawns, impact on plants, access issues due to wheelchair use and the likely requirement to obtain paid help to assist in clearance. This issue is regularly raised in relation to protected trees whether in terms of applications for works, TPO confirmations or appeal decisions. The view of the Council is that the removal of leaves, clearing of gutters etc. is a normal part of property maintenance. Whilst it is appreciated that the clearing of leaves involves extra work, it is not a year round task and would only be substantially reduced by the removal of the tree which in the view of the Council would be a disproportionate response.

5. Conditions for gardening.

Issues are identified relating to the tree creating unfavourable conditions for gardening. Whilst the tree will outcompete certain types of plants planted close to it or beneath the canopy, it is not impossible to garden beneath trees. Many types of plants are suitable for planting beneath canopy cover and some will not grow in any other conditions. Often it is a case of gardening with, rather than against the prevailing conditions. A greenhouse is sited beneath the tree and is now unusable due to shade. It appears possible to relocate the greenhouse in another area of the garden in question.

6. Concerns regarding stability.

Concerns have been raised regarding the stability of the tree with reference to an amount of soil that was removed from the towpath in recent years. On inspection the soil removal did not appear to have substantially affected the root structure of the tree and there were no signs of instability evident. One of the objections refers to structural calculations relating to tree stability: whilst there are certain tests that can be carried out to ascertain the likely stability of a tree, these are not routinely applied where evidence of an issue is absent. Specific structural calculations relating to tree safety are not available.

7. Insurance

Property insurance was mentioned in relation to the tree. There are many properties within the District with large protected trees substantially closer than the tree in question. These properties do not appear to have issues in obtaining insurance and therefore the properties on Hints Road should not experience difficulties in obtaining insurance.

3.4 Applications can be made and determined under the new 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).

Alternative Options	1. The Committee may choose not to confirm the Tree Preservation 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.		
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	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.		
Crime & Safety Issues	1. N/A		
A	<p style="text-align: center;">Risk Description</p> <p>High Court Challenge (after confirmation)</p>	<p style="text-align: center;">How We Manage It</p> <p>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.</p>	<p style="text-align: center;">Severity of Risk (RYG)</p> <p>Green</p>



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Tree Preservation Orders Map

Drawing Details:
Scale : 1:366
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Lichfield District Council

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Lichfield District Council
Tree Preservation Order Number 423-2018
81 Hints Road, Hopwas, Tamworth, Staffs
Eastings 417945 Northings 304639

All the trees described in this schedule are situated in the Whittington and Streethay ward in the District of Lichfield. All plot numbers referred to are Ordnance Survey numbers on 1:10000 sheets.

TREES SPECIFIED INDIVIDUALLY

Encircled in black on the map

Reference on Plan	Description	Situation
T1	Oak	Land adjacent to 81 Hints Road, Hopwas, Tamworth Staffs

TREES SPECIFIED BY REFERENCE TO AN AREA

Within a dotted line on the map

Reference on Plan	Description	Situation
	None	

GROUPS OF TREES

Within a broken line on the map

Reference on Plan	Description	Situation
	None	

WOODLANDS

Within a continuous black line on the map

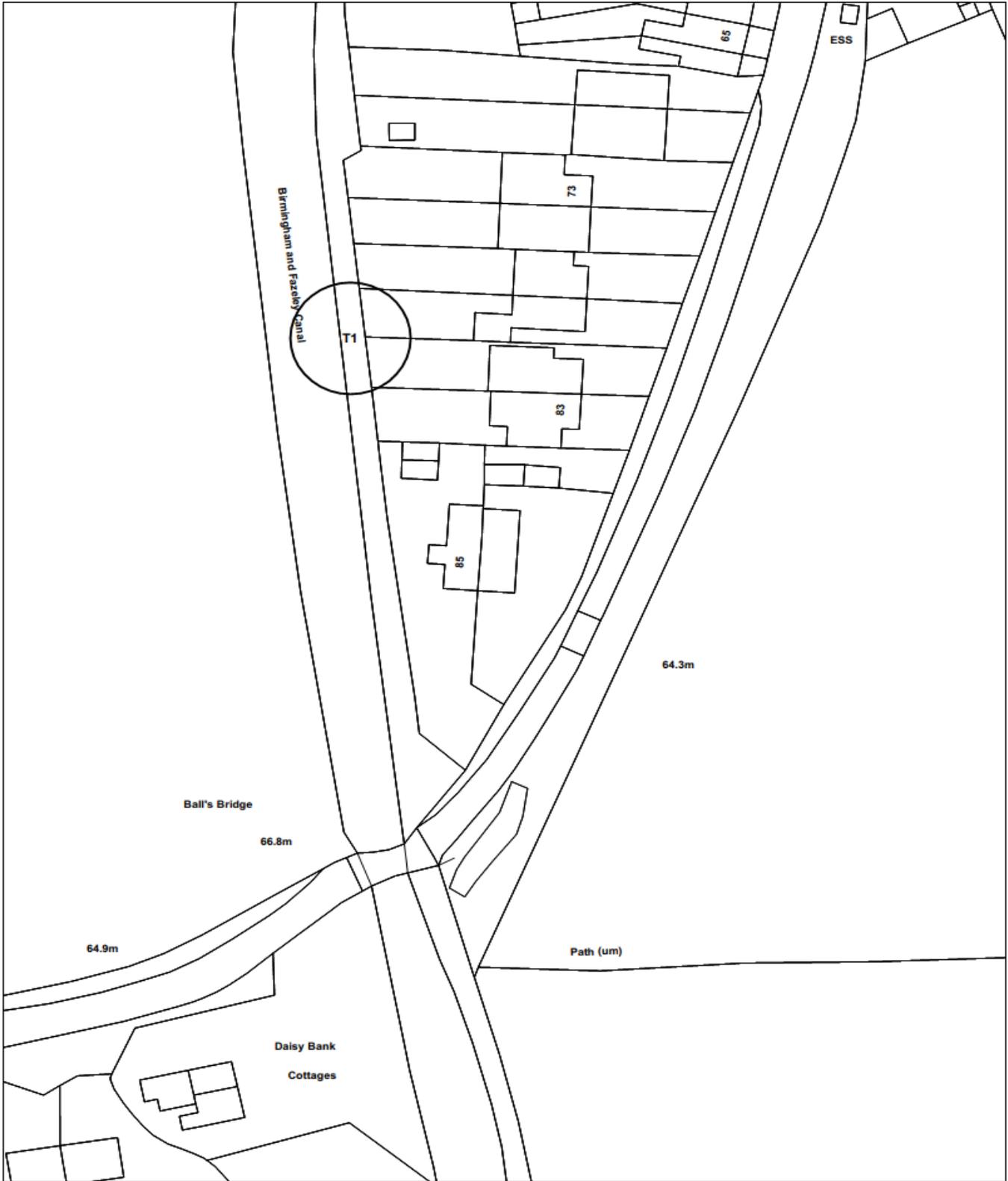
Reference on Plan	Description	Situation
	None	

**LICHFIELD DISTRICT COUNCIL
GROUNDS FOR MAKING TREE PRESERVATION ORDER 423-
2018.**

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Signed:

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G. Hare.



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Title:
 Lichfield District Council
 Tree Preservation Order No 423- 2018
 81 Hints Road, Hopwas, Tamworth, Staffs
 Eastings 417945 Northings 304639

Scale: 1:500 **Dated:** 26/09/2018

Drawn By: Gareth Hare

Drawing No: 1



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