

Tree Preservation Order No 444-2020

Cabinet Member: Iain Eadie

Date: 01/06/2020

Agenda Item: 7

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Key Decision? NO

Local Ward Members Cllrs David Leytham, Harry Warburton, Alan White.



1. Executive Summary

- 1.1 To seek members decision regarding the confirmation of Tree Preservation Order 444-2020.

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 16th of January 2020 in respect of several individual trees within the Parkes Drive to Hamstall Close part of the Streethay Development. The grounds for the order are as follows:

The trees within this order stand within or adjacent to the new homes built as part of the Streethay development site. The trees are newly planted as part of the strategic landscaping scheme for the site and combine with those within the larger open spaces to provide an attractive and desirable residential area. Two groups of established trees are included as mature trees on the site are scarce and these trees add interest and maturity to the site. All of the trees are visible from public highways and several are visible from public open spaces.

Where trees within the schedule are shown as (C) these trees are included within the approved landscaping plans (dwgs Bir.2007_135/136/138 of planning application 15/00173/REMM) but are not present at the time of making the order. It is a condition of the planning consent that these trees must be provided and retained. Once they are planted they will be protected by this tree preservation order automatically.

The earlier agricultural land use means that there are few existing trees on the site and the new tree planting is important to provide long-term visual amenity and the other benefits that trees provide. Therefore, in order to ensure the successful establishment and long-term retention of the trees, and to maintain the quality the development, it is considered prudent to include the trees within a tree preservation order in the interest of visual amenity.

The TPO schedule and plan are at **Appendix A**.

- 3.2 One objection to the order was received and raised a number of points.
- 3.3 The points are summarised below and dealt with in context for ease of reference:

- **The tree will grow and block light.**

The tree in question is a moderately sized ornamental Pear. The interception of diffuse daylight should be limited due to its size. It is noted that the tree is located to the North West of the property and therefore its shade segment will be primarily cast away from the objectors' property.

- **Objector is concerned regarding having control over their own tree. Not able to lop or top without seeking formal consent**

Tree preservation orders enable a Local Planning Authority to protect trees in the interests of amenity and to give effect to planning conditions. This involves an interference with the rights of the individual to carry out works to trees within their ownership. This interference in property ownership is based on the benefits that trees give to society. In developments like Streethay with little tree cover it is particularly important that trees are planted and retained in accordance with the approved scheme (as set out at 3.1).

- **Tree is close to garden wall and concern raised regarding potential damage to the wall and potentially the house, from roots.**

The planting is part of an approved scheme where the potential for damage will have been taken into account in the construction of the wall, the house and the proximity of the tree. If there are continuing concerns regarding damage then an application to remove the tree could be made in the normal manner with appropriate supporting evidence.

- **No reference prior to purchase that the Council proposed to plant a tree within land owned by the objector.**

As detailed at 3.1 (2nd paragraph) it is a condition of the planning consent that a tree is planted in this location and is an obligation for the developers rather than an action the Council intend to take.

- **The TPO is at odds with a restrictive covenant placed on the property which does not allow any hedge or plant on or near a boundary to exceed a height of 1.8 metres.**

As previously indicated it is a condition of the planning consent that a tree is planted in this location as part of the approved scheme. The developers cannot have intended the covenant to conflict with elements of the approved scheme and it is suggested that clarification is sought from the vendors regarding the intention of the covenant and their likely approach to enforcing it. As the tree has not yet been planted, there is sufficient time to clarify this point.

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).

3.5 As per 2.1 and taking the above into account it is recommended that Committee confirm the order with the modifications detailed.

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| Alternative Options | 1. The Committee may choose not to confirm the Tree Preservation Order or confirm it with modifications. |
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|------------------------|--|
| 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. |
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| 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 | 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. |
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| Crime & Safety Issues | 1. N/A |
|-----------------------|--------|

| | Risk Description | How We Manage It | Severity of Risk (RYG) |
|---|---|--|------------------------|
| A | High Court Challenge (after confirmation) | 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 |

Lichfield District Council
Tree Preservation Order Number 444-2020
Parkes Drive to Hamstall Close,
Streethay, Lichfield
Staffs, WS13 8GB
Eastings 413 029 Northings 310 613

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 | Ornamental Pear | side of 29 Yoxall Way, Streethay, Lichfield WS13 8FT |
| T2 | Ornamental Pear | side of 17 Perry Avenue, Streethay, Lichfield WS13 8FW |
| T3 | Ornamental Apple | side of 1 Perry Avenue, Streethay, Lichfield WS13 8FW |
| T4 | Silver Birch | front of 10 Perry Avenue, Streethay, Lichfield WS13 8FW |
| T5 | Ornamental Apple | side of 23 Yoxall Way, Streethay, Lichfield WS13 8FT |
| T6 | Silver Birch | front of 3 Berwick Avenue, Streethay, Lichfield WS13 8FY |
| T7 | Silver Birch | side of 11 Berwick Avenue, Streethay, Lichfield WS13 8FY |
| T8 | Silver Birch | side of 14 Berwick Avenue, Streethay, Lichfield WS13 8FY |
| T9 | Ornamental Pear | front of 14 Rudge Street, Streethay, Lichfield WS13 8FZ |

TREES SPECIFIED INDIVIDUALLY

Encircled in black on the map

| Reference on Plan | Description | Situation |
|-------------------|-----------------|--|
| T10 | Ornamental Pear | front of 10 Rudge Street, Streethay, Lichfield WS13 8FZ |
| T11 (c) | Silver Birch | side of 17-19 Lister Avenue, Streethay, Lichfield WS13 8GB |
| T12 | Silver Birch | side of 9 Lister Avenue, Streethay, Lichfield WS13 8GB |
| T13 | Silver Birch | side of 1 Rudge Street, Streethay, Lichfield WS13 8FZ |
| T14 | Rowan | side of 25 Lister Avenue, Streethay, Lichfield WS13 8GB |
| T15 (c) | Rowan | side of 24 Lister Avenue, Streethay, Lichfield WS13 8GB |
| T16 | Whitebeam | side of 1-3 Yoxall Way, Streethay, Lichfield WS13 8FT |
| T17 (c) | Whitebeam | side of 7 Thompson Way, Streethay, Lichfield WS13 8GD |
| T18 | Ornamental Pear | front of 2 Yoxall Way, Streethay, Lichfield WS13 8FT |
| T19 (c) | Ornamental Pear | front of 1 Thompson Way, Streethay, Lichfield WS13 8GD |

GROUPS OF TREES

Within a broken line on the map

| Reference on Plan | Description | Situation |
|-------------------|--|---|
| G1 | 3 Silver Birch | rear of 1 Rudge Street, Streethay, Lichfield WS13 8FZ |
| G2 | 1 Norway Maple, 1 Beech and 2 Silver Birch | car park rear of 1-7 Lister Avenue and 1-7 Rudge Street, Streethay Lichfield WS13 8FZ |

TREES SPECIFIED BY REFERENCE TO AN AREA

Within a dotted line on the map

| Reference on Plan | Description | Situation |
|-------------------|-------------|-----------|
|-------------------|-------------|-----------|

None

WOODLANDS

Within a continuous black line on the map

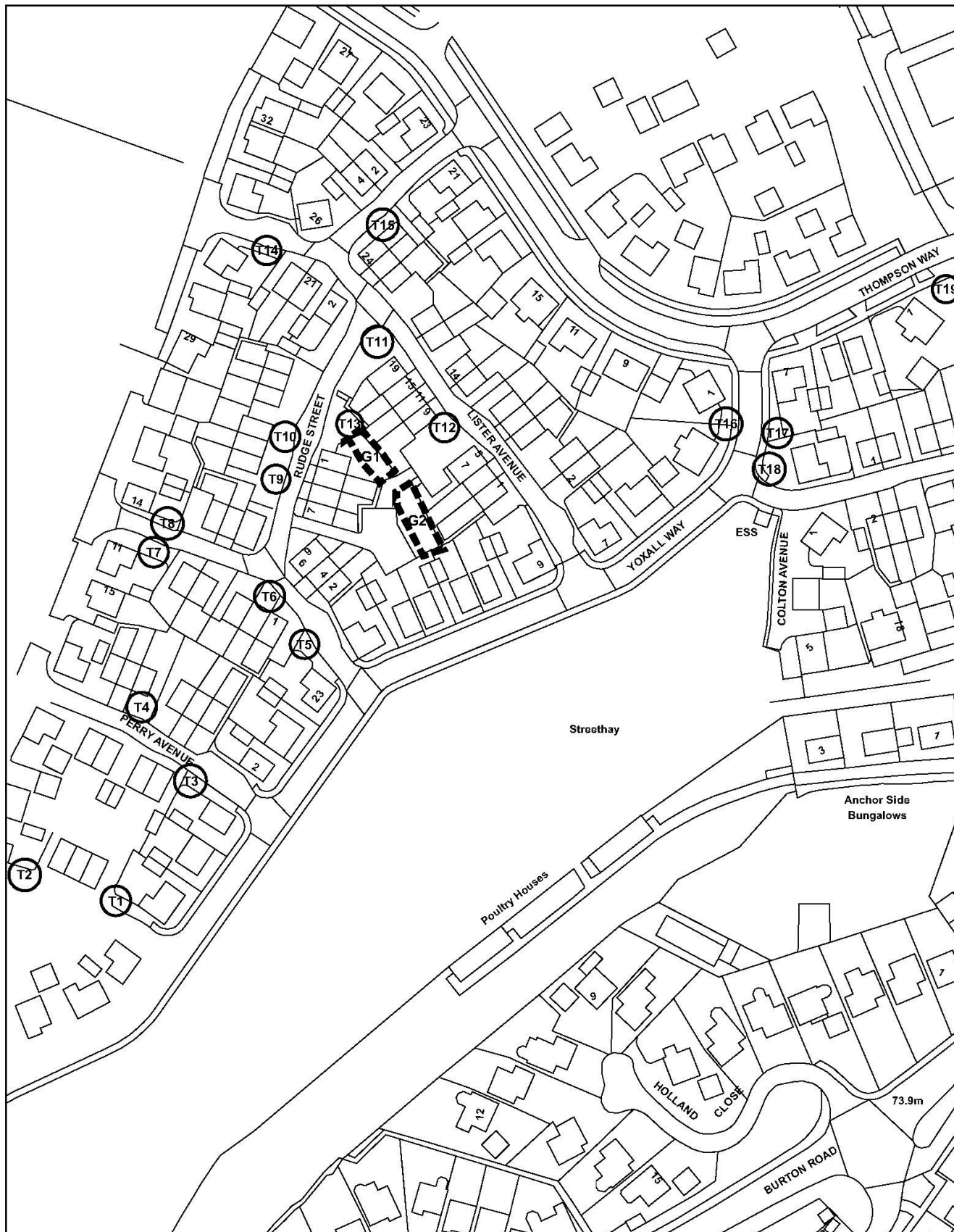
Reference on Plan

Description

Situation

None

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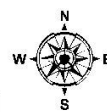
Title:
Lichfield District Council
Tree Preservation Order No 444-2020
Parkes Drive to Hamstall Close, Streethay
Lichfield, Staffordshire WS13 8GB
Eastings 413029 Northings 310613

Scale:
1:1,000

Drawn by: Portia Howe

Drawing No: 1

Dated: 03/01/2020



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