



DERBY CITY COUNCIL

PLANNING CONTROL COMMITTEE
21 OCTOBER 2010

ITEM 10

Report of the Director of Planning &
Transportation

Tree Preservation Order 2010 Number 559 (19 Ford Lane, Allestree, Derby)

SUMMARY

1. This report summarises and comments on an objection to a Tree Preservation Order (TPO) on a Blue Spruce tree at 19 Ford Lane, Allestree and recommends confirmation of the TPO without modification.

RECOMMENDATION

2. To approve confirmation, without modification, of Tree Preservation Order 2010 number 559 (19 Ford Lane, Allestree, Derby)

REASONS FOR RECOMMENDATION

3. To permanently confirm Tree Preservation Order 2010 number 559 (19 Ford Lane, Allestree, Derby) so as to control works to the Blue Spruce tree, avoiding a loss of amenity value to the street scene and the immediate and wider area.

SUPPORTING INFORMATION

- 4.1 On 26 May 2010 Derby City Council, in exercise of the powers conferred by sections 198, 201 and 203 of the Town and Country Planning Act 1990, made the above Tree Preservation Order (TPO) on 19 Ford Lane, Allestree, Derby as shown on the plan attached as Appendix 2.
- 4.2 The reason why the TPO was made is cited as: "The tree indicated in this Order is proposed for protection in the interests of visual public amenity. The tree is situated in a very prominent position and can be appreciated from the immediate vicinity as well as from further afield. The tree contributes materially to the amenities of the locality by playing an important part in providing a sense of scale and maturity and by having a general greening effect on the immediate and surrounding area."
- 4.3 A letter specifically objecting to the TPO was received from *Mr Phillip Fry (19 Ford Lane, Allestree, Derby)*; A copy of the objection letter is attached as Appendix 3. A further letter, which was received detailing information relating to the tree, is attached as Appendix 5.

- 4.4 The main points of *Mr Fry's* objection are listed in summary below followed by the Directors response.
- 4.5 **Objection point one:** Mr Fry objects to how the order was made, given that he and his contractors had made previous enquiries to establish the protected status of the tree only to be told that no statutory protection existed at that time.

Director's response to point one: The telephone conversation between Mr Fry and the TPO Officer (25/09/10) is the only record that we have of any attempt to ascertain the protected status of the tree. The TPO officer informed Mr Fry during this conversation that whilst no TPO existed, he would visit the property in order to assess the trees' amenity value for the purposes of considering its inclusion in a new TPO. The TPO Officer visited site the same day with the order being made and served the next day.

Objection point two: Mr Fry considers the tree to be a poor and aged specimen that has outgrown its amenity value and that its branches are poorly foliated and sparse with poor colouration; he refers to a tree contractor and how they would give evidence as to the specimen's alleged poor quality.

Director's response to point two: It is the opinion of the TPO and Arboricultural Officer that the tree is fairly typical of the species and exhibits those qualities that one would normally associate with such a tree. The amenity value and condition of the tree were considered sufficient by them to warrant its inclusion in a TPO. When invited to submit information or reports relating to the tree (see letter attached as appendix 4) nothing specific was received to substantiate its alleged poor quality (see letter attached as appendix 5).

Objection point three: Mr Fry considers that the maturity of the tree and its alleged poor condition render it oppressive and a nuisance to 19 & 21 Ford Lane. He considers that the overhanging branches and the trees juxtaposition with adjacent overhead telephone wires, give rise to risk and liability and a continuing nuisance.

Director's response to point three: There is no evidence that the tree is either oppressive or a nuisance to the properties. Where pruning works are considered to be appropriate the TPO Officer has offered to assist in producing a tree works application that would be supported by the Council. It is felt that the problems referred to can be addressed by a sensitive application as opposed to the options suggested by Mr Fry.

Objection point four: Mr Fry disputes the level of the trees' amenity value and does not accept that it has a prominent position, nor that it contributes materially to the locality and in this respect he considers that the trees' age will limit its ability to continue to do so. He offers to replant the tree with another Blue Spruce, if the order was not confirmed and he was allowed to fell the tree.

Director's response to point four: Several site visits have satisfied the TPO Officer and the Arboricultural Officer that the tree exhibits a sufficient level of amenity to warrant its inclusion in a TPO. The trees current age should also allow the tree to continue its contribution to the locality for a considerable length of time in respect of its potential life span of 150 – 200 years*

* Helliwell, D.R. (1967) "The Amenity Value of Trees and Woodlands"

OTHER OPTIONS CONSIDERED

5. The only other option considered is not to confirm the order, which would mean, that this tree is highly likely to be felled.

This report has been approved by the following officers:

Legal officer Financial officer Human Resources officer Service Director(s) Other(s)	
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For more information contact: Background papers: List of appendices:	Name 01332 256031 e-mail jason.humphreys@derby.gov.uk None Appendix 1 – Implications Appendix 2 – Location Plan Appendix 3 – Letter of objection Appendix 4 – Objection acknowledgement inviting further information Appendix 5 – Response letter Appendix 6 – Photographs
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IMPLICATIONS

Financial

1. None

Legal

- 2.1 The Local Planning Authority must, before deciding whether to confirm the Tree Preservation Order, consider any duly made objections.
- 2.2 The Local Planning Authority may modify the Tree Preservation Order when confirming it.

Personnel

3. None arising from this report.

Equalities Impact

4. None arising from this report.

Health and Safety

5. None arising from this report.

Carbon commitment

6. Retaining this tree would, in a small way, lock up carbon embedded in it and assist in limiting 'heat island' effects of global warming.

Value for money

7. None arising from this report.

Corporate objectives and priorities for change

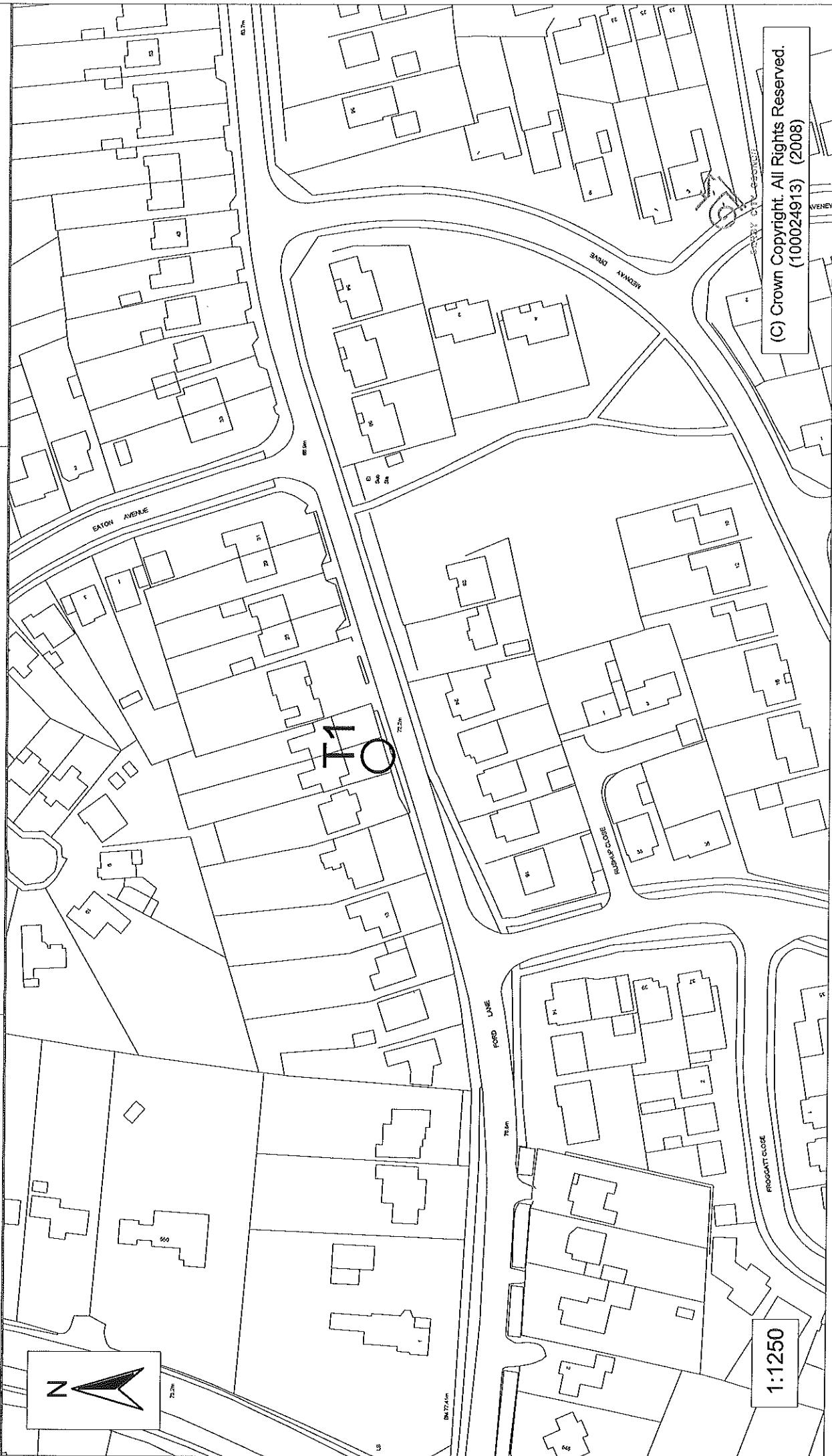
8. This decision would assist in taking forward the Corporate Priority of 'Moving Derby towards a better environment'.



DERBY CITY COUNCIL

Tree Preservation Order 2010 Number 559
Map referred to in the Derby City Council
(19 Ford Lane, Allestree, Derby)

Regeneration and Community
Roman House
Friar Gate
Derby
DE1 1XB



1:1250

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(100024913) (2008)

14 June 2010

Phillip Fry
C/o 19 Ford Lane
Allestree
Derby
DE22 2EX

Derby City Council
Natural Environment Team
Roman House
Friar Gate
Derby DE1 1XB

FAO: Mr Jason Humphreys

Dear Sirs

**TOWN AND COUNTRY PLANNING ACT 1990
TREE PRESERVATION ORDER 2010 NUMBER 559 DERBY CITY COUNCIL
19 FORD LANE, ALLESTREE DERBY**

I acknowledge receipt of your letter of 26 May 2010 received on 27 May, regarding the Council's Tree Preservation Order.

In accordance with Regulation 4 I wish to object to the Council confirming the Order. I attach a summary of objections and representations in accordance with Regulation 4 of the Town and Country Planning (Trees) Regulations 1999.

Yours faithfully


**PHILLIP FRY
SOLICITOR**

Specification of tree.

- 1 Reference **T1** submitted by Derby City Council at 19 Ford Lane, Allestree Derby.

Tree type - blue spruce.

Objections and other comments

- 2 The tree which is the subject of the six months Order pending confirmation by the Council, has not been previously made the subject of any Tree Preservation Order.
- 3 The tree does not occupy and is not located in a conservation area.
- 4 The action of the Tree Preservation Officer was precipitate in that the tree in question was not the subject of any previous Preservation Order and was only brought to his attention by the owner of the property on 25 May 2010 when contractors were engaged to remove the tree and replace it with a new specimen.
- 5 Enquires which had taken place prior to the purchase of the property in November 2009 had revealed that the tree was not the subject of a Preservation Order at that time and the owner occupier only made a further enquiry to check that this would remain the position on 25 May 2010. In a telephone conversation Mr Jason Humphreys stated to Mr Phillip Fry the owner, that the tree in question was not the subject of a Tree Preservation Order. It was only on the next day, 26 May 2010, that the Tree Preservation Officer notified the owner of the TPO. The owner's contractor was engaged to cut down the tree on 25 May 2010 but was unable to attend until the 26 May 2010. Having made a routine telephone call the previous week to check the status of the tree they were informed that it was not the subject of any Preservation Order, and attended site on 27 May 2010.

Tree Specification

- 6 The blue spruce tree which is the subject of the TPO is a poor and aged specimen which has outgrown its amenity value. It is currently out of scale with the adjoining properties, its branches are poorly foliated and sparse and its colouration is poor. The amenity of its foliage does not benefit the immediate or surrounding properties..
- 7 Mr Andy Portlock, the specialist tree contractor referred to above will give evidence as to the poor quality of the specimen.
- 8 The maturity of the tree and its poor condition renders it oppressive and a nuisance to both the property on which it is located, and also the adjoining property number 21 Ford Lane. The branches are currently overhanging the adjoining property which are outside

the control of the owner and this does or may in the future continue to constitute a nuisance.

Grounds for making the Order

- 9 The grounds for making the Order are misconceived. The Order states it is proposed for visual public amenity. This is denied. The tree has little public amenity value given its poor condition and better trees to neighbouring property.
- 10 The Order states *"the tree is situated in a very prominent position"*, This is denied. The tree is not prominent to its surroundings but is prominent to the property it occupies and its immediate neighbour at 21 Ford lane.
- 11 The tree it is not situated in any prominent position being amongst a line of 16 houses. For example it does not occupy a corner position.. The tree is flanked by neighbouring properties which have a range of trees of more proportionate and regular height and which display better foliage.
- 12 Whilst it is correct to say that the tree may be appreciated within the immediate vicinity and further afield, a view of the Ford Lane vicinity shows that there are trees in far better condition and are better visual amenity including large deciduous trees in common areas on Ford Lane which do not impact upon the immediate properties they occupy but contribute to the visual facility of the area. Whilst there may be a contribution to the visual amenity of the locality, it is incorrect to say that it contributes "materially" to the amenity of the locality, given the establishment of the range of trees in the road. It is also not correct to say that there is a general greening effect of the blue spruce tree to the immediate and surrounding area given the density of trees existing in the locality.
- 13 Even if the tree did contribute to the locality (which is denied) it is also denied that it provides a sense of scale. This sense of scale of this extremely mature and aging tree has to be set against the effect on the immediate properties which occupy and adjoin.

Balance/Convenience

- 14 Notwithstanding the objections to the Order and the dispute as to the initial findings of the Council as to the tree's quality, prominence and effect on the area, all of the Council's comments have to be balanced against the intrusive nature of the tree and its nuisance value to immediate and neighbouring properties on which it is located.

Conclusion

- 15 To conclude, I object to the Council's Order and comment that its grounds for making the Order are misconceived and incorrect for the reasons I have set out above. Even if this were not the case, (which is denied) the balance of convenience, given the poor quality and nature of the tree should permit in the first instance consideration for the tree to be removed.
- 16 Other relevant factors which the Council should take into account are the lack of scale and nuisance value of this tree to the immediate properties.
- 17 In the event that the Order is rescinded by the Council, or not confirmed within the six month period, the applicant would undertake to replace the existing aged specimen with a new blue spruce tree in accordance with Regulation 8 which would ensure a better quality of foliage, more proportionate aspect to the immediate neighbouring properties and enhance the environment in conjunction with the existing foliage in the immediate area.



DERBY CITY COUNCIL

Natural Environment Team, Roman House, Friar Gate, Derby DE1 1XB

**NEIGHBOURHOODS
Paul Robinson**

Mr Philip Fry
c/o 19 Ford Lane
Allestree
Derby
DE22 2EX

Your ref: JH/TPO559
Our ref: JH/TPO559
Date: 21 June 2010
Contact: Jason Humphreys
Telephone: 01332 256031
Email: Jason.humphreys@derby.gov.uk
Minicom: 01332 256666
Fax: 01332 369570

Dear Mr Fry

**TOWN AND COUNTRY PLANNING ACT 1990
TREE PRESERVATION ORDER 2010 NUMBER 559
DERBY CITY COUNCIL (19 Ford Lane, Allestree, Derby)**

The purpose of this letter is to acknowledge receipt of your objection to the above Tree Preservation Order (TPO).

A report will be prepared based on the points raised in your objection which will be made available to the planning control committee at a date yet to be confirmed.

Should you wish to supply any further information or reports relating to the tree I would be grateful if you could send them to me by the end of July so that the information can be included in the report to committee.

You will be duly notified of the decision of the committee on whether to confirm the order or not and also if the order will be subject to any modifications following the meeting.

If in the meantime you would like to speak to someone about the grounds for making the TPO, or wish to discuss your objection further then please call me on (01332) 256031.

Yours faithfully

Jason Humphreys

Tree Preservation Order Officer

www.derby.gov.uk



23 July 2010

Phillip Fry
C/o 19 Ford Lane
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Derby City Council
Natural Environment Team
Roman House
Friar Gate
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FAO: Mr Jason Humphreys

Dear Sirs

**TOWN AND COUNTRY PLANNING ACT 1990
TREE PRESERVATION ORDER 2010 NUMBER 559 DERBY CITY COUNCIL
19 FORD LANE, ALLESTREE DERBY**

I acknowledge receipt of your letter of 21 June 2010 and as suggested supply further information before 31 July 2010 relating to the tree .

I note that the higher branches of the tree overhang and clash with the telegraph wire adjacent the property, which give rise to a continuing risk and liability to, I assume, BT. Unless some substantial reduction of height or asymmetrical lopping occurs(neither of which would be entirely satisfactory) the better option would be for a new healthy replacement tree to be planted to be positioned and trimmed as appropriate during maturity to avoid the telephone wires.

Yours faithfully



**PHILLIP FRY
SOLICITOR**

