

Report sponsor: Director of Planning, Transport and Engineering
Report author: Tree Preservation Order Officer

Confirmation of TPO No. 606 – 55 Kelmoor Road, Alvaston, Derby

Purpose

- 1.1 The Planning Control Committee is asked to consider an objection to the making of TPO No.606

Recommendation(s)

- 2.1 To authorise the Director of Planning, Transport and Engineering to confirm Tree Preservation Order (TPO) No. 606 without modification.

Reason(s)

- 3.1 In the interest of public visual amenity.

Supporting information

- 4.1 On 26th April 2022 we made Derby City Council (55 Kelmoor Road, Alvaston, Derby) Tree Preservation Order 2022, Number 606
A copy of the TPO plan can be seen as Appendix 1.
A copy of the TPO schedule can be seen as Appendix 2.
Photographs of the trees can be seen as Appendix 3.
The amenity evaluation score can be seen as Appendix 4.
- 4.2 **Grounds for making the order** – The trees indicated in this Order are proposed for protection in the interests of public visual amenity. The trees can be appreciated from the public realm and contribute materially to the amenities area by playing an important part in providing a sense of scale and maturity and by having a general 'greening' effect on the immediate area.
- 4.3 **Background information** – The owner of the trees requested the making of the TPO as they were concerned that a resident to the north of the tree would significantly prune the trees. The trees were assessed for their suitability to be included within a TPO and scored sufficiently to justify inclusion within the TPO.

Public/stakeholder engagement

- 5.1 One objection to the making of the TPO was received on 18th May 2022.
The objection letter (redacted) can be seen as Appendix 5.
A letter of support was received on 16th May 2022.
The letter of support is summarised as below:
 - We see these trees every day.
 - They are lovely examples of Mature Silver Birch and are an asset both to the area and to nature.

Other options

- 6.1
- Not to confirm the TPO
 - Confirm the TPO with a modification.

Financial and value for money issues

- 7.1 None.

Legal implications

- 8.1 Before confirming the TPO the LPA must consider valid objections to the making of the TPO.

Climate implications

- 9.1 None

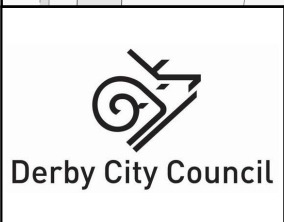
Other significant implications

- 10.1 The TPO assessment did take into account the influence that the trees are having on habitable buildings. Whilst there is a negative influence the trees still scored sufficiently to justify inclusion within a TPO. If the trees are causing structural damage to a property mitigatory measures could be implemented by following the TPO tree works application process. Certain exception may also be applicable, and we have offered to give pre-application advice.
- 10.2 There is a danger of informing people that we are considering making a tree subject to a TPO in that this may pre-empt people into carrying out drastic pruning/removal before the TPO is made. If the TPO is made we can then consider a TPO tree works applications which must usually be in accordance with BS3998: 2010 Tree Works - recommendations.

This report has been approved by the following people:

Role	Name	Date of sign-off
Legal Finance Service Director(s) Report sponsor Other(s)	Paul Clarke	05/07/2022

Background papers: List of appendices:	Appendix 1 (TPO plan) Appendix 2 (TPO schedule) Appendix 3 (Photos of trees) Appendix 4 (Amenity evaluation) Appendix 5 (Objection letter)
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Derby City Council (55 Kelmoor Road, Alvaston, Derby)

Tree Preservation Order 2022, Number 606

Appendix 1

Drawing No: TPO No.606

Date: 26/04/2022

Map Scale: 1:1250

Contact: Andy Shervill
Department:
Communities and Place

Telephone Number: (01332) 640666



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Town and Country Planning Act 1990

The [*Derby City Council (55 Kelmoor Road, Alvaston, Derby)* *Tree Preservation Order 2022, Number 606*]

The [*Derby City 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 [*Derby City Council (55 Kelmoor Road, Alvaston, Derby) Tree Preservation Order 2022, Number 606*]

Interpretation

2. - (1) In this Order “the authority” means the [*Derby City 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.

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Dated this [26th] day of (April 2022]

[if the Council's Standing Orders require the sealing of such documents:]

~~[The Common Seal of [Derby City Council]~~

~~was affixed to this Order in the presence of—~~

~~.....]~~

[if the Council's Standing Orders do not require the sealing of such documents:]

[Signed on behalf of the [Derby City Council]



.....

Verna Bayliss - Director of Planning, Transportation and Engineering

Authorised by the Council to sign in that behalf]

~~[CONFIRMATION OF ORDER~~

~~[This Order was confirmed by [Derby City Council] without modification on the
[] day of []]~~

~~OR~~

~~[This Order was confirmed by the [Derby City Council], subject to the modifications
indicated by [], on the [] day of []]~~

~~[Signed on behalf of the [Derby City Council]~~

~~Authorised by the Council to sign in that behalf]~~

~~[DECISION NOT TO CONFIRM ORDER~~

~~[A decision not to confirm this Order was taken by [Derby City Council] on the []
day of []]~~

~~[Signed on behalf of the [Derby City Council]~~

.....

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Classification: OFFICIAL

~~Authorised by the Council to sign in that behalf~~

~~[VARIATION OF ORDER~~

~~[This Order was varied by the [Derby City Council] on the [] day of [] by a variation order under reference number [] a copy of which is attached]~~

~~[Signed on behalf of the [Derby City Council]~~

~~.....~~

~~Authorised by the Council to sign in that behalf~~

~~[REVOCAION OF ORDER~~

~~[This Order was revoked by the [Derby City Council] on the [] day of []]~~

~~[Signed on behalf of the [Derby City Council]~~

~~.....~~

~~Authorised by the Council to sign in that behalf~~

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Article 3

SCHEDULE**Specification of trees****Trees specified individually**

<i>Reference on map</i>	<i>Description</i>	<i>Situation</i>
[None]		

Trees specified by reference to an area

<i>Reference on map</i>	<i>Description</i>	<i>Situation</i>
[None]		

Groups of trees

(within a broken black line on the map Appendix 1)

<i>Reference on map</i>	<i>Description (including number of trees of each species in the group)</i>	<i>Situation</i>
[G1]	2 Birch	Located in the north east corner of the rear garden of 55 Kelmoor Road, Alvaston, Derby.

Woodlands

<i>Reference on map</i>	<i>Description</i>	<i>Situation</i>
[None]		

TPO 606 Photos:

View from Kelmoor Road to the south.



View from jitty looking west.



View from jitty looking south west.



Date: -		25/04/2022	Surveyed by: Andrew Shervill		
Site:	55 Kelmoor Road		Ref	G1	
Species: Birch					
1	Size	SCORE (A)	6	Suitability to area	SCORE (B)
1	Very small 2-5m ²	5	1	Just suitable	3
2	Small 5-10 m ²		2	Fairly suitable	
3	Small 10-25 m ²		3	Very suitable	
4	Medium 25-50 m ²		4	Particularly suitable	
5	Medium 50-100 m ²				
6	Large 100-200 m ²				
7	Very large 200 m ² +				
2	Life expectancy		7	Future amenity value	
1	5-15 years	2	0	Potential already recognised	1
2	15-40 years		1	Some potential	
3	40-100 years		2	Medium potential	
4	100 years +		3	High potential	
3	Form		8	Tree influence (current or future)	
-1	Trees which are of poor form	1	-1	Significant	-1
0	Trees of not very good form		0	Slight	
1	Trees of average form		1	Insignificant	
2	Trees of good form				
3	Trees of especially good form				
4	Visibility		9	Added factors	
1	Trees only seen with difficulty or by a very small number of people	2	If more than one factor relevant maximum score can still only be 1		1
2	Back garden trees, or trees slightly blocked by other features		1	Screening unpleasant view	
			1	Relevant to the Local Plan	
3	Prominent trees in well frequented places		1	Historical Association	
		1	Considerably good for wildlife		
			1	Veteran tree status	
5	Other trees in the area		Addeed factor: considerably good for wildlife		
0	Wooded surroundings	2			
1	Many				
2	Some				
3	Few				
4	None				
Score column A		12			4
The suitable benchmark rating for inclusion within a TPO is 15			10	Rating A+B	16

Typical useful life expectancy of common trees.

300+ Yew

200-300 Oak, Sweet Chestnut, Plane, Sycamore, Lime

150-200 Scots Pine, Hornbeam, Beech, Tulip Tree, Norway Maple, Lebanon Cedar

100 -150 Ash ,Spruce, Walnut, Red Oak, Horse Chestnut, Field Maple, Monkey Puzzle, Mulberry, Pear

70 - 100 Rowan, Whitebeam, Apple, Gean, Catalpa, Robinia, Ailanthus

50 - 70 Poplars, Willows, Cherries, Alders, Birches.

TPO 606 Objection letter

Please take this email in writing to an objection to TPO Number 606 at 55 Kelmoor Road on the grounds of :

1. The 2 silver birch trees are in a poor state / condition and only going to get worse, as they are to close together. In winds conditions, they bash into each other causing danger to me and our family from falling branches. The tenant at 55 Kelmoor Road has never attempted to prune these 2 trees back since they got above 2 meters.
2. The larger of the 2 is leaning badly towards the Public walk way and substation, so could endanger pedestrians and electrical output , especially on winder days. There has already been many branches dropping into the walk way and the electrical substation. Also interfering with electrical servicing underground, when required.
3. As both trees are near to my property and are well known for taking up lots of water from the ground, we now have structural cracking to our building, which has now got worse on dryer summer months. As a professional builder for the last 30+ years, I can say this will be down to the drying out of the ground due to these tree's getting larger and so taking up more water from the subsoil around the area.
4. There is risk to the larger tree falling into the substation yet again, as there has already been one large branch falling into the substation, of which I removed before we ended up with a power cut etc. Disposed of at my own cost.
5. The trees are being used as a screen as there are 2 close to each other and should be 20 - 30ft apart to let them grow fully and without restrictions. If brought closer together, then this would act as a screen or even hedge. Then they should be kept at a height of approximately 2 meters.

If the trees form a vegetative screen that is limiting a neighbours usage/enjoyment then it could be a High Hedge issue which Planning Enforcement would potentially get involved with.

6. High Hedges

The term 'high hedges' was subjective until it was defined by the Anti-Social Behaviour Act 2003: Part 8 in 2005. This is a summary of what constitutes a high hedge under the law:

- The hedge is **more than 2m** (approx 6½ft) tall (there is extra guidance for hedge heights on slopes)
- A hedge is defined as a **line of two or more trees or shrubs**. Of which there are and also on going into next door at 23 Grimshaw Avenue and 57 Kelmoor Road, to the other side of the walk way.

7. The fence we have was there before trees were present and are affecting the time it takes for our garden gate and fence, to dry out after rain showers, which is resulting in them rotting faster than they should do. Even after preserving them each year. Costing us even more money to fix.

Also not allowing us to see if there is anyone at the back gates either for access or courting unlawful issues in that area, as there has been many over the years. From drug taking and dealing.

8. The law states that if a property has received daylight for the last 20 years you may be entitled to continue to receive that light.

Right of Light Act

If your neighbour's tree is blocking light to a window or glass house on your property, then you might be able to acquire a Right to Light under Planning law. The Rights of Light Act 1959 states that if a property has received daylight for the last 20 years (the minimum prescribed period), you may be entitled to continue to receive that light.

Also has the council / Mr A. Shirvell looked into the 45 degree rules before actioning the temporary TPO ?

As our building was built before these trees appeared, then the building does have this right from day one of planning and building. Though now the grounds and gardens do not have this in place because of these over grown younger trees. Blocking light to building and greenhouse.

9. As there is more than one tree and also next door has large bushes at 23 Grimshaw Avenue. Plus next door to 55 Kelmoor Rd has evergreen trees etc.

We are being blocked in by lots of tenants' wanting to put trees and screens up.



As you can see the main tree is hanging over our gate way and knocking into our sheds. They are not of natural beauty because they have not been allowed to grow as full tree, they are too close together.





As for us we have none at the height of all the neighbours in our area. These evergreen trees at 57 Kelmoor Road are kept to a reasonable height, although as they are conifer trees, they still are above 2 meters in height. Though we have no issue with this as long as, they don't go above roof ridge height. As you can see, they do prune theirs back to a good level. As you can see, the others are just a total overgrown mess. Would you like to see this as you open your curtains and while trying to enjoy your back garden??

10. Action set on a TPO for the 2 trees in question also tell us that you are allowing the owner of these 2 trees to carry on with them growing out of control (of which he has never attempted to prune back in their life time) to the extent of damaging our property and anything else around the area of these trees. This includes public walkways, our property, including multiple sheds and LIVE pond (which has newts and frogs in them) to go to rack and ruin because of the branches and mass leaves and seeds falling off these trees?? The very things we are trying to protect ? Do Newt's have a protection order on them.

11. As the trees block light to the walk way, this makes drying out time longer in fair weather, thus making the pathway slipper / wet for longer. Also encouraging growth of weeds and moss etc. That's why in part the pathway is in a poor state of repair. This pathway has been maintained by myself for the last 4 years, I may add. Weeds, dog muck, bags and clear up of branched and leaves from all the trees in the path area.

12. Furthermore and to reiterating :

OBJECTIONS TO THE ORDER:

- The tree poses a hazard to our home.
- The protected trees are on private property and are not FULLY visible from a public vantage points.
- The pruning back of trees from his garden would not have a significant impact on the local environment or public amenity.
- Silver Birch trees are not rare and do not have cultural or historic value.
- The trees are not special in terms of the area's character.
- The trees are not important to the New Forest National Park as they are in a built-up area within a semi-rural environment and were not there less than 20 years ago, then building in the area were and had full rights to sunrise into sun set.
- The TPO creates a burdensome level of bureaucracy.
- The trees are in a position where water can accumulate. The retention of water may affect the trees' stability.
- We considers that his human rights should have been considered.
- The Birch tree situated in the rear north corner of their property leans and as it grows may in time be of a size that should it fail it would damage our home and walkway / substation.
- The Birch trees situated corner and centrally on the rear boundary has low hanging branches affecting the rear garden, making it dangerous to walk around in, especially on windy day. Controlling the times when we can walk around in it. This would be in breach of my Human rights.
- Birch trees have shallow root systems and this together with damp soil conditions may result in the tree failing.
- The property is on clay soil, the trees roots may in time cause damage to the foundations of adjacent structures.
- The trees are on private land and are therefore not a public amenity.
- Undertaking tree work is complicated by the imposition of a TPO.
- We feel victimised / bullied (so could be a law / police matter) as the property at 55 Kelmoor Road, have not had a requirement to plant new trees in order to maintain the Alavston character.
- Other tree owners have undertaken management of their trees (as shown in the pictures) and it is unfair that this work was not done with the 2 Birch trees in question, from day one of them being planted.

Looking at a site meeting with Margaret Beckett, Andy Shirvell (who set up the TPO), Alan Graves, Paul Clarke and the tenant at 55 Kelmoor Rd to resolve the issues we have with his trees. As Mediators.

Reason being, have had tried to chat to the tenant before and all I got was abuse. That's why I sent a letter concerning the pruning back of the trees. NOT felling.

Look forward to hearing from you all on this stressful situation. That basically shouldn't be, if it wasn't dealt with in a heavy handed council way.