



## Tree Preservation Order 2005 Number 431 (Land to the rear of 189 Duffield Road, Derby)

### RECOMMENDATION

- 1.1 Committee is asked to approve the confirmation of Tree Preservation Order 2005 Number 431 (Land to the rear of 189 Duffield Road, Derby) without modification.

### SUPPORTING INFORMATION

- 2.1 On 22 June 2005 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 land to the rear of 189 Duffield Road, as shown on the plan attached as Appendix 2.
- 2.2 The reason why the TPO was made is cited as: "The trees indicated in this Order are proposed for protection in the interests of visual public amenity. The trees can be seen from Duffield Road and can also be seen from the public footpath that runs along the rear boundary of 189 Duffield Road. The trees contribute materially to the amenities of the locality, playing an important part in providing a sense of scale and maturity to the immediate vicinity. The trees are also under threat from development pressures, this Order is necessary to protect these visually important trees."
- 2.3 A letter objecting to the TPO was received from Mr Petros Christou, who is the owner of 189 Duffield Road. A copy of the objection letter is attached as Appendix 3.
- 2.4 Members should be aware that the objector fails to mention that the trees are situated on land that the objector wishes to develop. Pre-application discussions have taken place between planning officers, one of the Council's arboricultural officers and the objector. These discussions have concluded that in principle, the plot of land could accommodate both trees and residential development.
- 2.5 A letter supporting the TPO was received from Ms Hernandez and Mr Moss who reside in the property adjacent to 189 Duffield Road. A copy of the supporting letter is attached as Appendix 4.
- 2.6 The main points of Mr Christou's objection are listed below followed by the Assistant Director's response.
- 2.7 **Mr Christou objection point one:** "The trees have no real value as they cannot really be seen from the main road i.e. Duffield Road and do not contribute to the amenities of the locality at all."

- 2.8 **Assistant Director's response to point one:** As shown on the plan (Appendix 2) the trees are situated on a plot of land to the rear of 189 Duffield Road. This plot of land is also adjacent to the playing field of the school. Because of the playing field's open character it allows the trees to be clearly seen when viewed from the north of the site. Also the trees can be seen from the footpath to the west of the site. When viewed from the footpath the trees have a screening effect.
- 2.9 **Mr Christou objection point two:** "The garden is totally dark due to the obstruction of light and there are no wild birds or other wildlife on the trees."
- 2.10 **Assistant Director's response to point two:** Although the trees may cast some of the garden into shade the garden seems to be of sufficient size to cope with reduced light levels. The lack of light does not detract from the fact that the trees have accrued sufficient amenity value to justify a TPO. The TPO was not made in relation to wildlife issues; however it is extremely unlikely that wildlife does not inhabit/frequent the trees.
- 2.11 **Mr Christou objection point three:** "Some of the trees bend dangerously and would fall and damage the neighbour's wall. Some of the trees appear to be diseased and dying."
- 2.12 **Assistant Director's response to point three:** Trees that have become dangerous are exempt from the TPO, although it is advised that five days notice is given to the LPA before any remedial works are carried out. At the time the TPO was made all the trees specified in the order appeared to be in a satisfactory condition, when inspected by the City Council's arboricultural officer, meriting inclusion within the order.
- 2.13 **Mr Christou objection point four:** "The immediate area is significantly full of trees and the cut of these trees will not significantly adversely affect the greenery in the area or have a negative impact on the greater vicinity."
- 2.14 **Assistant Director's response to point four:** Despite the fact that there are other trees in the area the trees specified in this order have a positive effect on the character of the area. It would have a detrimental effect on public amenity and the pleasant character of the area if the trees were to be removed.
- 2.15 In the letter of support of this TPO, Appendix 4, two extra points are made, which I comment on briefly. The point raised in the supporting letter regarding the alleged contravention of the TPO has already been investigated and should not affect the confirmation of the TPO. Regarding the point raised in the supporting letter relating to the land registry, I can inform Committee that the owner, Mr Christou, has applied for a Certificate of Lawful Existing Use (application ref: DER/08/05/01411PRI) – This will establish whether or not the land forms part of the curtilage of the dwelling and determine the "brownfield"/"greenfield" issue, which could have a bearing on the determination of a planning application. I would reiterate that I do not consider either of these points relevant to the decision whether or not to confirm the TPO.

- 2.16 In conclusion Committee is asked to agree the confirmation of TPO 2005 Number 431 without modification.

<b>For more information contact:</b>	Andy Shervill - Tel: 01332 256031 E-mail: <a href="mailto:andy.shervill@derby.gov.uk">andy.shervill@derby.gov.uk</a>
<b>Background papers:</b>	Tree Preservation Orders, A Guide to the Law and Good Practice
<b>List of appendices:</b>	Appendix 1: Implications Appendix 2: Plan Appendix 3: Letter of objection Appendix 4: Letter of support

<b>IMPLICATIONS</b>
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**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 directly arising.

**Corporate objectives and priorities for change**

4. The confirmation of Tree Preservation Order 2005 No. 431 will support the Council's vision and priorities by contributing to the objective: "a diverse, attractive and healthy environment."