

Confirmation of TPO No. 618

Purpose

- 1.1 The Planning Control Committee is asked to consider an objection to the making of TPO No.618

Recommendation(s)

- 2.1 To authorise the Director of City Vibrancy & Growth to confirm Tree Preservation Order (TPO) No. 618 without modification.

Reason(s)

- 3.1 In the interest of public visual amenity.

Supporting information

- 4.1 On 24th July 2023 we made Derby City Council 25 Darley Park Road, Darley Abbey, Derby) Tree Preservation Order 2023, Number 618.
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 tree can be seen as Appendix 3.
The amenity evaluation score can be seen as Appendix 4.
- 4.2 **Grounds for making the order** – The tree indicated in this Order is proposed for protection in the interests of public visual amenity. The tree can be appreciated from the public realm and contributes materially to the amenities of the area by playing an important part in providing wildlife habitat and providing a sense of scale and maturity. The tree also contributes to the general ‘greening’ effect within the Derwent Valley Mills World Heritage Buffer Zone.
- 4.3 **Background information** – The tree owner requested that the TPO was made on the tree as they are concerned that a neighbour has pruned the tree to a poor standard and allegedly trespassed in order to carry out the works. The tree owner is particularly concerned that the continual pruning may disturb the day time Tawny Owl roost.
- 4.4 **Assessment of tree** – Following the request from the tree owner to make the tree subject to a TPO the tree was assessed for its suitability to be included within a TPO. Despite the tree being located within a back garden with limited views from the public realm the tree still scored sufficiently to justify inclusion within a TPO (see appendix 4).

Public/stakeholder engagement

- 5.1 One objection to the making of the TPO was received electronically on 3rd September 2023.

The objection text (redacted) can be seen as Appendix 5.

The grounds for the objection are summarised below:

I (the objector) do not believe that this tree justifies preservation in the interests of public visual amenity. It only has very limited visual access for the public. The location of the tree next to woodland and adjacent gardens with many other trees and shrubs mean the tree does not play an important role for wildlife habitat.

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

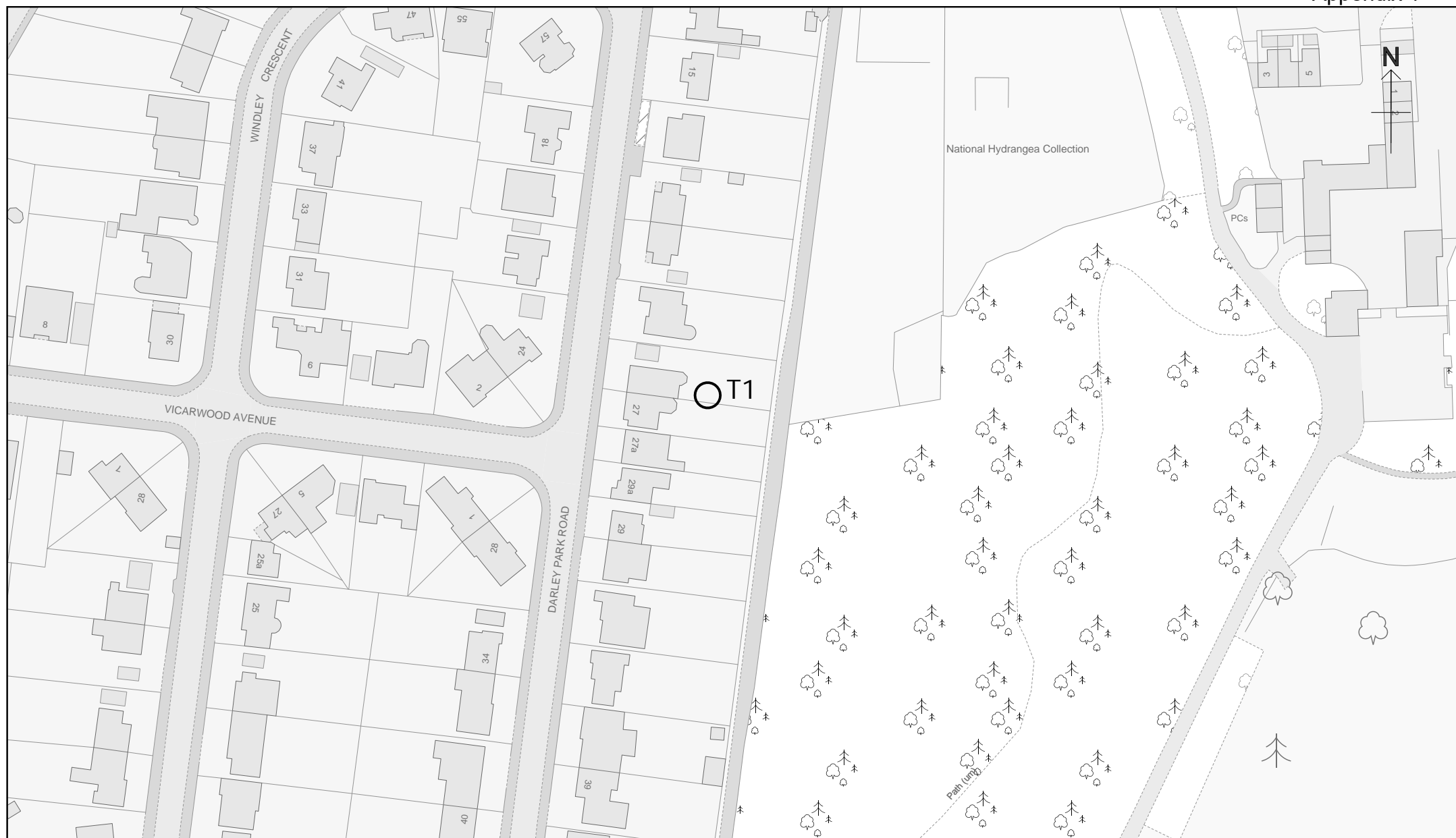
Other significant implications

- 10.1 None

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	07/11/2023

Background papers: List of appendices:	Appendix 1 (TPO plan) Appendix 2 (TPO schedule) Appendix 3 (Photos of tree) Appendix 4 (Amenity evaluation) Appendix 5 (Objection text)
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Derby City Council

Appendix 1

Derby City Council (25 Darley Park Road, Darley Abbey, Derby)
Tree Preservation Order 2023, Number 618

Drawing No: TPO No.618

Date: 21/07/2023

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 (25 Darley Park Road, Darley Abbey, Derby) Tree Preservation Order 2023, Number 618*.]

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 (25 Darley Park Road, Darley Abbey, Derby) Tree Preservation Order 2023, Number 618

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 [24th] day of (July, 2023]

[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]~~

~~.....~~

Classification: OFFICIAL

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~~

~~[REVOCATION 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**

(encircled in black on the map Appendix 1)

<i>Reference on map</i>	<i>Description</i>	<i>Situation</i>
[T1]	Birch	Located in the rear garden of 25 Darley Park Road close to the south boundary with 27 Darley Park Road.

Trees specified by reference to an area on Appendix 1

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

<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>
[None]		

Woodlands

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

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

View from Jitty to the east.



View from within garden of 25 Darley Park Road



Date: -		21/07/2023		Surveyed by: Andy Shervill	
Site: 25 Darley Park Road		Ref T1			
Species: Birch					
1	Size	SCORE (A)	6	Suitability to area	SCORE (B)
1	Very small 2-5m ²	4	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	3	0	Potential already recognised	2
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	
3	Prominent trees in well frequented places		1	Relevant to the Local Plan	
		1	Historical Association		
		1	Considerably good for wildlife		
		1	Veteran tree status		
5	Other trees in the area				
0	Wooded surroundings	1			
1	Many				
2	Some				
3	Few				
4	None				
Score column A		11			5
The suitable benchmark rating for inclusion within a TPO is 15		10	Rating A+B		16

The objection is on the following grounds:

Public Visual Amenity:

- The location of the tree is in a back garden with no overlooking houses to the rear and only very limited visibility from the public footpath behind our homes and Darley Park. As such the tree does not provide a significant public visual amenity benefit.
- As our houses back on to the top of Darley Park, specifically at the wooded area of the park, there are many many other trees in the immediate area, including several birches so while this tree will provide some wildlife habitat, the tree does not provide an important habitat for the local wildlife. Moreover we have a holly tree in our garden which provides valuable berries for wildlife in winter which is struggling to grow properly because of the overhanging branches of the birch tree, so the current birch tree without trimming, is actually harmful to local wildlife.
- In addition the tree is very close to both our fence and house with associated risk of damage to our property. It is also worth recognising that the tree is already not in a healthy state, see attached photograph. I am concerned that with the preservation order, our neighbour will not carry out the routine maintenance needed for a tree of this size, that it's location justifies.
- There are only two households who can directly touch the tree. One is us, who can only trim overhanging branches. The second is our neighbour who has the access to trim or remove the tree. So the only people who can remove or do major work to the tree is our neighbour. Because of this I struggle to see the motivation for our neighbour to request a preservation order.
- I am concerned that my neighbour is using the Council to pursue a petty and vindictive campaign against myself and my family.
- This started over a year ago when we shared with her work we were looking to do on our home. She objected, which is of course her right. This took over a year to resolve with us needing to engage a lawyer and barrister. Once all concerns regarding the proposed work were addressed and work started, she then regularly complained to the party wall surveyors about the work, none of which were valid.
- Having firstly used threats from lawyers, then complaints to party wall surveyors, she is now using the Council to continue this campaign of harassment.
- One part of this is to raise this tree preservation order, which she only did after we advised her that we wanted to trim overhanging branches on the birch tree. She has not requested preservation orders on other trees in her garden which do not overhang our garden.
- In addition in the same timeframe she has raised an anti social behaviour complaint against us for our dog barking, reference 472611, with the environmental services team which we are also objecting to.
- To summarise, I do not believe that this tree justifies preservation in the interests of public visual amenity. It only has very limited visual access for the public. The location of the tree next to woodland and adjacent gardens with many other trees and shrubs mean the tree does not play an important role for wildlife habitat.
- Again I would question the motivation of our neighbour in requesting the preservation order. Clearly she does not want to cut the tree down, so her motivation seems to be to make life as difficult as possible for us to trim back the tree. I would suggest this is because of the reasons I have detailed above, none of which justify raising a tree preservation order.