



Tree Preservation Order 2006 Number 446 (87 Morley Road, Chaddesden, Derby)

RECOMMENDATION

1. To approve confirmation, without modification, Tree Preservation Order 2006 Number 446 (87 Morley Road, Chaddesden, Derby)

SUPPORTING INFORMATION

- 2.1 On 18 January 2006 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 a group of trees at 87 Morley Road as shown on the plan attached as Appendix 2.
- 2.2 The reason why the TPO was made is cited as: "The Council have made this Order because the trees indicated in this Order are proposed for protection in the interests of visual public amenity. The trees are situated in a prominent position and can be clearly seen from the public highway. The trees contribute materially to the amenities of the locality, playing an important part in providing a sense of scale, maturity and textural diversity to the immediate vicinity. The trees may also be 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 Harold Statham. A copy of the objection letter is attached as Appendix 3.
- 2.4 The main points of Mr Statham's objection are listed below followed by the Assistant Director's response.
- 2.5 **Mr Statham's objection point one:** "Object to overhang of branches above my boundary and over my drive."
- 2.6 **Assistant Director's response to point one:** Under common law land owners are entitled to cut to the boundary branches that overhang into their property. However if the trees are protected with a TPO they would need permission from the Local Planning Authority to do so but any application for reasonable works which retained the amenity, health and safety of the trees would always be treated sympathetically.
- 2.7 **Mr Statham's objection point two:** "Object to tree roots growing beyond boundary."

- 2.8 **Assistant Director's response to point two:** Again under common law land owners are entitled to cut to the boundary roots that grow into their property. However if the trees are protected with a TPO they would need permission from the Local Planning Authority to do so, but again application for reasonable works which retained the amenity, health and safety of the trees would always be treated sympathetically.
- 2.9 **Mr Statham's objection point three:** "Object to dangerous overgrowth over pavement and my drive in growing period. A danger to pedestrians and limitation to visibility for motorists leaving my drive."
- 2.10 **Assistant Director's response to point three:** As with all TPO'd trees interested parties can apply to carry out works to the protected trees. Applied works to trees in order to abate pedestrian and vehicle obstruction problems are looked at in a sympathetic manner. Indeed the Council can issue the owner of the tree with a Section 154 notice (under the Highways Act 1990). This notice requires that vegetation which obstructs the passage of vehicles is pruned to abate the obstruction. The notice overrides the TPO, meaning that the owner of a TPO'd tree issued with a Section 154 notice does not need permission from the LPA to prune the tree in order to comply with the notice. The permitted works are only to abate the obstruction; any further works above and beyond this would need permission from the LPA.
- 2.11 **Mr Statham's objection point four:** "No lopping or maintenance has been done on this willow tree other than by myself in this past, or at my expense. Physically and financially at 87 years of age (on basic pension) no longer can I keep this nuisance of a tree in order."
- 2.12 **Assistant Director's response to point four:** Regardless of the TPO the owner of the tree is still responsible for the maintenance of the tree. While I can sympathise with Mr Statham regarding the problems that the tree is causing him the Council is not legally responsible for the tree. Mr Statham has been advised to liaise with the tree owner and try to come to an amicable agreement about the management of the trees. The existence of the TPO does not make any difference to maintenance responsibilities.
- 2.13 **Mr Statham's objection point five:** "I request that future lopping up to my boundary of branches and roots be done by the Council or at the expense of the owner."
- 2.14 **Assistant Director's response to point five:** As mention in 2.12 the owner of the tree, and not the Council, is responsible for the tree. It is worth pointing out the problems that the tree is causing would still be apparent even if the tree was not TPO'd. The TPO only necessitates that interested parties have gained permission form the LPA to carry out works and as mentioned in 2.6 applications to work on trees of this nature are looked at in a sympathetic manner.

- 2.15 In conclusion Committee is asked, in the interest of public amenity, to confirm, TPO 2006 Number 446 (87 Morley Road, Chaddesden, Derby) without modification.

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Background papers:	Tree Preservation Orders, A Guide to the Law and Good Practice
List of appendices:	Appendix 1: Implications Appendix 2: Plan Appendix 3: letter of objection

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 directly arising

Supporting the Council's vision and priorities

4. The confirmation of Tree Preservation Order 2006 Number 446 will support the Council's vision and priorities by contributing to the priority to "improve the quality of life in Derby's neighbourhoods".