

Tree Preservation Order 2005 Number 443 (111 Duffield Road, Derby)

RECOMMENDATION

- 1.1 To approve confirmation, without modification, of Tree Preservation Order 2005 Number 443 (111 Duffield Road, Derby).

SUPPORTING INFORMATION

- 2.1 On 14 November 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 a single Cedar tree as shown on the plan attached as Appendix 2.
- 2.2 The TPO was made following a notification of the owner's intention to fell the tree. He wished to fell it as the owner of the adjacent property (No 113) had claimed the tree was damaging his property. The formal 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 prominent position within Strutts Park Conservation Area and is also situated adjacent to a main thoroughfare into and out of Derby. The tree contributes materially to the amenities and to the character of the Conservation Area, playing an important part in providing a sense of scale and maturity to the immediate vicinity. A notice under Section 211 of the Town and Country Planning Act 1990 has been submitted by the owner of the tree, notifying of their intention to remove the tree. The evidence submitted to justify the removal of the tree is insufficient, therefore this Order is necessary to protect this visually important tree."
- 2.3 A letter objecting to the TPO was received from W J Nicholson who is the owner of 113 Duffield Road. A copy of the objection letter is attached as Appendix 3.
- 2.4 W J Nicholson also submitted two photographs which are referred to in his objection, the two colour photographs are available to view at the Committee meeting.
- 2.5 A second letter objecting to the TPO was received from Mr Noton who is the owner of 111 Duffield Road. A copy of the objection letter is attached as Appendix 4.

- 2.6 A third letter objecting to the TPO was received from Marishal Thompson and Company, Arboricultural Consultants, acting on behalf of Royal and Sun Alliance. A copy of the objection letter is attached as Appendix 5.
- 2.7 Marishal Thompson and Company has also submitted a report which also contains a formal objection to the Order on the grounds that the tree“ has been implicated by site investigation results as a contributory factor in subsidence damage to No113 related to clay shrinkage”. A copy of the report is attached as Appendix 6.
- 2.8 I am responding to all three objections collectively due to the fact that the three objections are based on the same claim that the tree specified in the Order is playing a significant role in subsidence at 113 Duffield Road, Members are advised to consider all three objection letters when determining a decision on whether to approve confirmation of this TPO.
- 2.9 In response to the section 211 notification, the objections and the survey information provided, technical advice was sought from the Council’s Team Leader of Buildings: Bridges and Structures Design and the Council’s Arboricultural Manager. Their opinion is that the technical information submitted, thus far, by Marishal Thompson and Company does not support the claim that the tree is significantly responsible for the subsidence damage at 113 Duffield Road. They recommend that more information on certain matters needs to be sought, before a final decision can be made. This has been sought from the applicant, but as yet this information has not been supplied.
- 2.10 It is though necessary to make a decision now on the confirmation of the Order. In the absence of the information needed by the City Council to make a final decision on the effect the tree is having on the adjacent property, I am recommending that the Order is confirmed.
- 2.11 Discussions can still continue on the effect that the tree may be having on the adjacent property. If it is proved to the City Council’s satisfaction that the tree is responsible for the subsidence then the tree could be removed under the “legal nuisance” exemption of the Preservation Order legislation, or following the granting of an application to fell the tree.
- 2.12 Although I am happy with our response to the section 211 notification and our internal consultation process, I have asked for an independent structural engineer to reassess the Marishal Thompson and Company report (Appendix 5). This will enable us to deal with any future application or appeal in a speedy and efficient manner. The results of the independent assessment should be available at the Planning Control Committee meeting.

For more information contact:	Andy Shervill, Tel: 01332 256031 e-mail: andy.shervill@derby.gov.uk
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 from W J Nicholson
	Appendix 4: Letter of objection from Mr Noton
	Appendix 5: Letter of objection from Marishal Thompson and Company
	Appendix 6: Marishal Thompson and Company report

IMPLICATIONS

Financial

- 1.1 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

- 3.1 None directly arising.

Supporting the Council's vision and priorities

- 4.1 The confirmation of Tree Preservation Order 2005 No. 443 will support the Council's vision and priorities by contributing to the objective: "a diverse, attractive and healthy environment."