

**Tree Preservation Order 2005 Number 440 (5 Abbey Lane,  
Darley Abbey, Derby)**

**RECOMMENDATION**

- 1.1 To approve confirmation, without modification, of Tree Preservation Order 2005 Number 440 (5 Abbey Lane, Darley Abbey, Derby)

**SUPPORTING INFORMATION**

- 2.1 On 14 September 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 situated in the garden of 5 Abbey Lane, as shown on the plan attached as Appendix 2.
- 2.2 The 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. It is situated in a prominent position within Darley Abbey Conservation Area and contributes positively to the character of the Conservation Area. The tree's visual impact will significantly increase as the tree matures, adding to the amenities and to the character of the Conservation Area."
- 2.3 The Cedar was made subject to a TPO in response to a section 211 notification "Notification of work to trees in Conservation Areas" with reference to the removal of two trees. The LPA had no objections to one of the trees being removed but concluded that the Cedar was worthy of retention and that a TPO was expedient.
- 2.4 A letter objecting to the TPO was received from Ms Valerie Leatt. A copy of the objection letter is attached as Appendix 3.
- 2.5 A letter supporting the section 211 notification to remove the trees was received from J P Rickard. A copy of this letter is attached as Appendix 4.
- 2.6 The relevant points of Ms Leatt's objection are listed below followed by the Assistant Directors response.

- 2.7 **Ms Leatt's objection point one:** "Both the trees in question are in the middle of the lawned area and need to be removed as they are so huge that they cover the lawned area and the roots are coming up also. Both trees considerably restricts the space we have. "
- 2.8 **Assistant Director's response to point one:** Whilst assessing the section 211 notification the Council's Arboricultural Manager advised that he had no objections to one of the trees being removed but advised that the Cedar was worthy of retention and that a TPO was expedient.
- 2.9 The removal of the tree that the LPA had no objections to being removed would give more space in the objector's garden. If in the future the tree protected by the TPO becomes unsuitable for its location remedial works can be applied for, however at this time I consider the tree is appropriate to its location, has good form, has no major defects and has accrued sufficient public amenity value to justify a TPO. Any restriction on space felt by the objector is considered to be outweighed by the public amenity that is provided by the tree.
- 2.10 **Ms Leatt's objection point two:** "My neighbours driveway and back yard area is now being affected by roots which are spreading back from our lawn. He is very concerned about the damage that it is causing to his property."
- 2.11 **Assistant Director's response to point two:** The owners of the tree/the neighbours or their agents need to prove that the tree is responsible for the damage that is occurring to the neighbours drive and back yard area. If it is proved that the tree is responsible for the damage then the tree is known to be causing a legal nuisance. It is worth noting that Under the Town and Country Planning (Trees) Regulations 1999 remedial works can be carried out to abate a legal nuisance without consent from the LPA.
- 2.12 **Ms Leatt's objection point three:** "...however is it correct that the order was put on the tree after I had made my application? If the trees are/were that important why was there not a Tree Preservation Order prior to this time?"
- 2.13 **Assistant Director's response to point three:** As mentioned in 2.3 the TPO was made in response to a section 211 notification. The Town and Country Planning Act 1990 makes special provision for trees in Conservation Areas which are not subject to a TPO. Under section 211 anyone proposing to cut down or carry out works on a tree in a Conservation Area is required to give the LPA six weeks' prior notice (a "section 211 notice"). The purpose of this requirement is to give the LPA an opportunity to consider whether a TPO should be made in respect of the tree. The section 211 notice, submitted by the objector, was assessed by the Council's Arboricultural Manager who had no objections to the tree closest to the neighbour's property being removed but advised that the Cedar tree (as shown on the plan Appendix 2) is worthy of retention and considered a TPO expedient, to this end a TPO was made.

- 2.14 In conclusion Committee is asked, taking into consideration the objection, to approve confirmation of Tree Preservation Order 2005 Number 440 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> Tree Preservation Orders, A Guide to the Law and Good Practice
<b>Background papers:</b>	Appendix 1: Implications
<b>List of appendices:</b>	Appendix 2: Plan Appendix 3: letter of objection Appendix 4: Letter of support for the section 211 notification

<b>IMPLICATIONS</b>
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**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. 440 will support the Council's vision and priorities by contributing to the objective: "a diverse, attractive and healthy environment."