

Tree Preservation Order 2006 Number 449 17-29 Penny Long Lane

RECOMMENDATION

1. To approve the confirmation of, in a modified form, as detailed in the report, Tree Preservation Order 2006 449 17-29 Penny Long Lane.

SUPPORTING INFORMATION

- 2.1 On 25 January 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 trees in the rear gardens of 17-29 Penny Long Lane, 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 Broadway and contribute positively materially to the character of the area by giving a general greening effect and by adding a sense of scale and maturity to the vicinity. The trees are also situated on land that has potential to be developed for residential purposes; therefore the Order is necessary to protect significant trees which may be under threat."
- 2.3 A letter objecting to the TPO was received from Mr J Harding, owner of Greenbank, Penny Long Lane and Mr JS Millard owner of Winston, 23 Penny Long Lane. Copies of the objection letters are attached as Appendix 3.
- 2.4 The main points of firstly Mr Millard's objection and then Mr Harding's objection, are listed below followed by the Assistant Directors responses.
- 2.5 **Mr Harding's objection point one:** The Order is unfairly selective and could apply to other areas of land in the vicinity including other properties on Penny Long Lane adjacent to Broadway.

- 2.6 **Assistant Director's response to point one:** The Order has, in line with Government guidance, been made only on those trees that are visually important to the public and most importantly, are under threat of loss or damage from possible development. It is accepted that there are other visually important trees that are not the subject of a Preservation Order locally, but, in the words of the guidance, it is not "expedient" to protect them by a TPO, mainly because they are not known to be under any threat.
- 2.7 **Mr Harding's objection point two:** The Cedar tree covered by the Order is planted only a few feet from an inspection chamber of a sewerage pipe and its growth needs to be restricted by regular pruning to protect the sewerage pipe. It is also necessary to lift its crown regularly in order to allow grass mowing under the tree. Further, trees covered by the Order in the two adjacent properties, are encroaching on the objector's the garden competing for light with the Cedar.
- 2.8 **Assistant Director's response to point two:** When the Order was made it was not known that the tree was very close to a sewerage pipe. It is accepted that it would be unwise to cover this tree by the Order as the tree has potential to damage the pipe. Therefore it is proposed that the TPO is modified and that the tree is removed from the Order.
- 2.9 **Mr Millard's objection point one:** The Order was placed without prior notification and making observation of the property was an infringement of the property owner's rights.
- 2.10 **Assistant Director's response to point one:** It is normal practice not to give prior notice of the Council's intention to make a temporary Order so as to protect the trees from possible loss. The owner then has an opportunity to make objections, as Mr Millard has. With regard to rights, the City Council has a duty to protect trees of public significance and so has to inspect them from a public place in order to exercise that duty.
- 2.11 **Mr Millard's objection point two:** In preventing the objector from doing things with the trees, he considers his rights further infringed.
- 2.12 **Assistant Director's response to point two:** In order for works to be undertaken on a tree covered by an Order, the owner simply has to make a straightforward application to the Council. It is considered that in order to protect the long term amenity the trees give to the public, this restriction in what an owner can do to his trees, without consent, does not represent an unreasonable loss of private rights.
- 2.13 **Mr Millard's objection point three:** It is not clear which trees are covered by the Order and so the Order is unenforceable.
- 2.14 **Assistant Director's response to point three:** Given that there is a schedule and the plan attached to the Order setting out which trees are covered, it is not considered that there is any lack of clarity. However if the objector still has remaining doubts about which trees the order covers City Council officers would be happy to clarify this with the objector.

- 2.15 **Mr Millard's objection point four:** The Order will diminish the value of the property and no compensation has been offered.
- 2.16 **Assistant Director's response to point four:** It is not accepted that there will be any affect on property values and in any case there is no legal provision for compensation for any effects an Order may have. However if an application is refused for work to a tree covered by an Order, then the owner may claim compensation for demonstratable loss.
- 2.17 **Mr Millard's objection point five:** The objector is deprived of his right to prune the trees in order to allow more light into the garden.
- 2.18 **Assistant Director's response to point five:** As noted in paragraph 2.12 reasonable works, which protect the amenity of the trees, will not be restricted, as all that is necessary is the submission of an application to the City Council to undertake the works.
- 2.19 Members are therefore recommended to confirm the Order, but in a modified form, firstly to exclude the Cypress tree situated within Greenbank from G1 and also to amend the Schedule to change the descriptions of T2 and T3 from Swamp Cypress to Dawn Redwoods (a species that looks very similar).

For more information contact:	David Slinger, Natural Environment Team Leader, Tel - 01332 256001 E-mail – david.slinger@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: letters of objection

IMPLICATIONS

Financial

1. None.

Legal

2. The Local Planning Authority must, before deciding whether to confirm the Tree Preservation Order, consider any duly made objections.

Personnel

3. None directly arising.

Corporate objectives and priorities for change

4. The confirmation of Tree Preservation Order *2006 449* will support the Council's vision and priorities by contributing to the objective: "a diverse, attractive and healthy environment."