



DERBY CITY COUNCIL

PLANNING CONTROL COMMITTEE
18 March 2010

ITEM 9

Report of the Assistant Director - Regeneration

Tree Preservation Order 2010 Number 551 (283 Morley Road, Oakwood, Derby)

RECOMMENDATION

1. To approve confirmation, without modification, Tree Preservation Order 2010 number 551 (283 Morley Road, Oakwood, Derby).

SUPPORTING INFORMATION

- 2.1 On 2nd October 2009 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 *283 Morley Road, Oakwood, Derby*, 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. The tree is situated in a very prominent position and can be appreciated from the immediate vicinity as well as from further a field. The tree contributes materially to the amenities of the locality by playing an important part in providing a sense of scale and maturity and by having a general greening effect on the immediate and surrounding area."
- 2.3 Planning application 06/09/00729 granted consent to the erection of a dwelling and a detached garage at 281 Morley Road. The footprint of the garage was located within the Root Protection Area (RPA) of the Beech tree; the consent contained conditions that required the use of a specific foundation design in order to avoid damaging the RPA.
- 2.4 A letter objecting to the TPO was received from *Mr Hatton (281 Morley Road, Oakwood, Derby)*. A copy of the objection letter with photos is attached as Appendix 3.
- 2.5 The main points of *Mr Hatton's* objection are listed in summary below followed by the Assistant Directors response.
- 2.6 **Objection point one:** Mr Hatton questions if there is an indispensable need for the making of a TPO and considers that there is "indisputable evidence of low level amenity given the government guidance on such".
- 2.7 **Assistant Director's response to point one:** We consider that the amenity value of the Beech tree was and still is of a sufficient level to merit its inclusion in a TPO. Furthermore since the order was made, tree removal has taken place at 281 Morley Road which has increased the prominence of the tree and thus its importance within the street scene (see the TPO Officer's photos attached to this report as Appendix 4).

- 2.8 **Objection point two:** Mr Hatton regards the presence of dead and diseased branches that ‘overhang the public highway’, the close proximity of the tree to an adjacent street lighting column and bus stop sign, his view that the tree has an untidy appearance with an asymmetrical form and his view that the tree will require management works and immediate maintenance all as reasons for not confirming the TPO. Mr Hatton also considers that the structural condition of the tree implies that it has a safe life expectancy that would not exceed 10 years.
- 2.9 **Assistant Director’s response to point two:** The maintenance and upkeep of a tree lie with the tree owner whether the tree is the subject of a TPO or not; the TPO makes provisions for works to be carried out to trees that are considered to be dead, dying, diseased and dangerous without the need to submit a formal application. We are happy to meet with the tree owner or Mr Hatton to discuss the extent of appropriate works that fall outside the scope of works considered to be exempt. Since the Order was made no application has been made to carry out any works to the tree.
- 2.10 Further, a recent independent tree report commissioned by Mr Hatton as part of the planning application described the tree as having ‘some prominence in the adjacent street scene’, of having a ‘generally balanced form’ and described the structural and physiological conditions as fair and considered it worthy of a category ‘B’ under British Standards 5837: Trees in relation to Construction. A category ‘B’ tree is one that would be able to make a significant contribution for a minimum of 20 years.
- 2.11 **Objection point three:** Mr Hatton feels that confirming the TPO would add to Derby City Council’s costs and its exposure to risk and associated liability. He requests that in the event of the TPO being confirmed the City Council accepts liability as a result of any problems arising from a TPO which holds up or prevents corrective maintenance.
- 2.12 **Assistant Director’s response to point three:** As highlighted in the response to objection point 2, the responsibilities, risks and duties of owning a tree lie with the tree owner, regardless of any protected status. Mr Hatton recognises in his letter, that the Authority would only become liable where consent has been sought through a Tree Works Application that is refused and where consequent damage by the tree could ‘reasonably have been foreseen. I refer to my previous response to point 2 in which I highlighted the fact that no Tree Works Application has been made since the Order was made.

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|---|---|
| <p>For more information contact:</p> | <p>Jason Humphreys, Tree Preservation Order Officer, Tel - 01332 256031 Jason.Humphreys@derby.gov.uk</p> |
| <p>Background papers: List of appendices:</p> | <p>Tree Preservation Orders, A Guide to the Law and Good Practice Appendix 1: Implications Appendix 2: Location Plan Appendix 3: Letter of objection Appendix 4: Photos of tree Appendix 5: Tree Report extract</p> |

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| IMPLICATIONS |
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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.

Corporate objectives and priorities for change

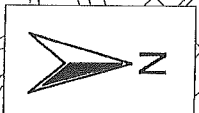
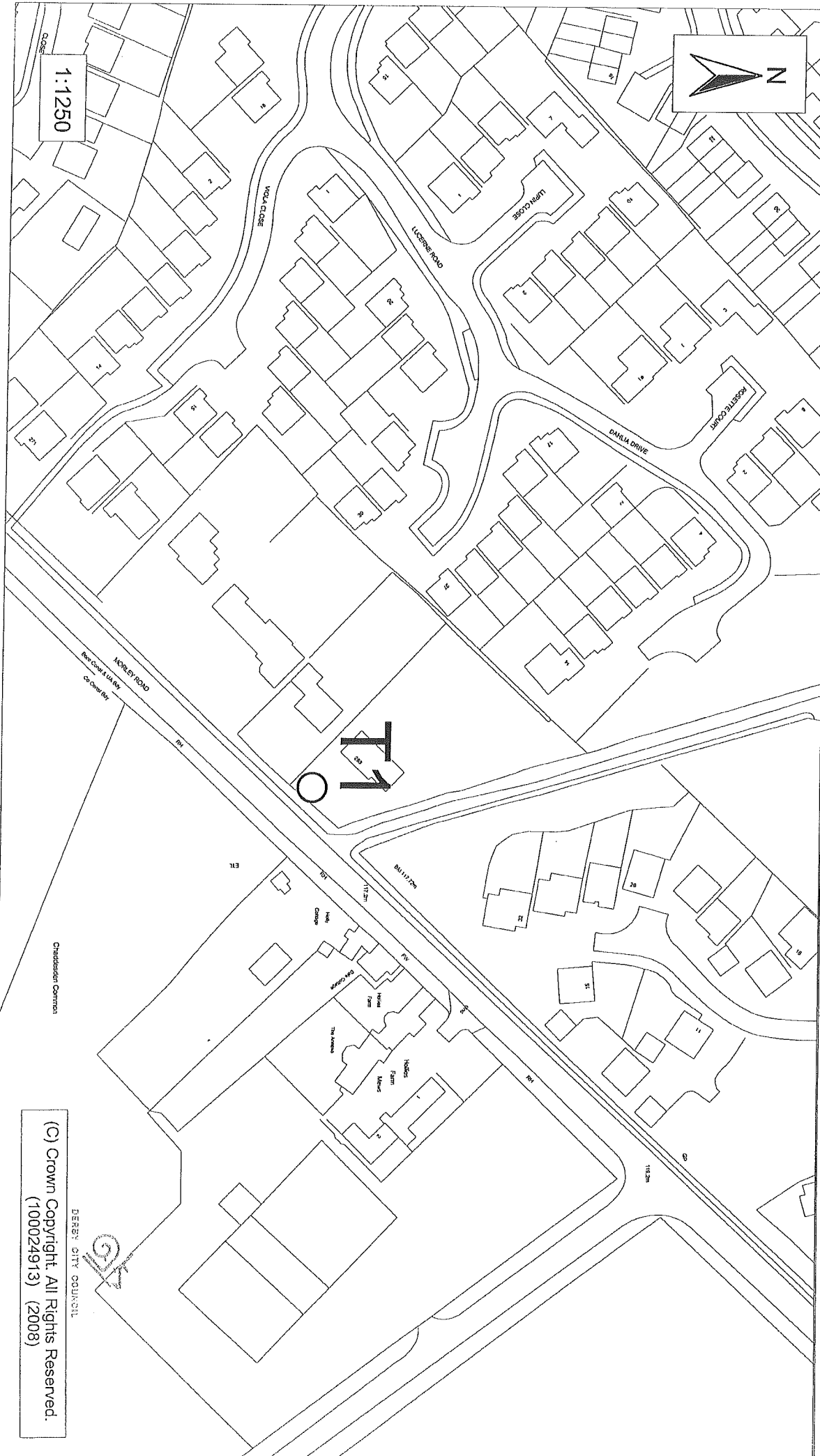
4. The confirmation of Tree Preservation Order *2010 Number 551* will support the Council's vision and priorities by contributing to the objective: "Leading Derby towards a better environment".



DERBY CITY COUNCIL

Tree Preservation Order 2009 Number 551
Map referred to in the Derby City Council
(283 Morley Road, Oakwood, Derby)

Regeneration and Community
Roman House
Friar Gate
Derby
DE1 1XB



1:1250

T1

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(100024913) (2008)



DERBY CITY COUNCIL

Charleston Common

Mr A P Hatton
281 Morley Road
Oakwood
Derby
DE21 4TD

28th October 2009

Mr Jason Humphreys
Tree Preservation Order Officer
Natural Environment Team
Roman House
Friar Gate
Derby
DE1 1XB

Dear Sir

Re: TREE PRESERVATION ORDER 2009 NUMBER 551

Following advice received within TPO order package ref 551/JH dated 02 October 2009. The Authority is kindly requested prior to confirming TPO 2009 number 551 that it considers the relevance, validity, and defensibility of confirming TPO 2009/551.

Guidance issued by the government to local authorities informs that amenity is the test for any TPO. With reference to Tree Preservation Orders: A Guide to the Law and Good Practice:-

Individual impact: the mere fact that a tree is publicly visible will not itself be sufficient to warrant a TPO. The LPA should also assess the tree's particular importance by reference to its size and form.

Wider impact: the significance of the trees in their local surroundings should also be assessed, taking into account how suitable they are to their particular setting.

It is further stated "In the Secretary of State's view, it would be inappropriate to make a TPO in respect of a tree which is dead, dying or dangerous."

It is questioned that there is an indispensable need for the Authority to issue a TPO in this case. There is indisputable evidence of low level amenity given the government guidance on such.

Should the Authority wish to provide amenity then there are alternative courses of action which could offer a more practicable and sustainable approach. An alternative may better serve the longer term interests of amenity, public health and safety, and financial interests of both owners and the Authority whilst inline with government guidance.

Amenity being the principle test for TPO suitability.

- Within (Fig A) it is shown that the tree will require much needed and beneficial management works if it is to be retained.
- The tree structure is in largely poor form and generally untidy in appearance presenting poor visual amenity.
- The tree is heavily asymmetrical in form (Fig B) and in need of corrective maintenance.
- There are examples of dead and diseased branches overhanging the public highway (Fig C).
- The diseased section overhangs a public gathering point (bus stop) this presents an immediate danger to the public if not addressed.
- Unmanaged growth resulting in the tree effecting public infrastructure.
- The tree is growing around a lamp post, (Fig D) this largely engulfs the light at night - impaired light is a reduction of public amenity and a serious danger if not addressed.
- Loss of usable infrastructure and amenity has resulted in increased risk to both pedestrians and road users, this is unnecessary and avoidable, if the tree is retained, immediate maintenance would be required to remove risk and improve amenity.

Wider amenity concerns:-

In reflection of the “particular setting” the tree obstructs a lamp light which serves to illuminate two public gathering points adjacent the busy highway. Gathering point denoted in (Fig E) presents a particularly vulnerable situation to the public; as it does not benefit from an off road approach or a significant off road standing area thus the obstructed light presents avoidable high risk to public health and safety on this busy highway if not addressed. Both bus stops are service stops for school children and in such warrant heightened concern.

Given that it can now be suggested reasonably foreseen by the Authority if not acted upon, would the Authority confirm that it, having now been fully informed of the immediate situations accept liability as a result of any problems, be they health and safety or accidents arising from a TPO being placed on this tree which either held up or prevented corrective maintenance.

Can the Authority consider that public amenity value is very limited; therefore this would make the subject unsuitable for a defensible TPO. There is an alternative in that the subject tree is removed and a suitable replacement be found, this would remove all concerns and significantly increase the amenity value for a greatly increased period of time. We would not object to a significant contribution nor would we be averse to looking at an additional planting scheme to remedy the situation.

Financial Implications

Is such a financial burden being placed on the Authority in this case a defensible cost; administrative costs are already being brought against the Authority in both serving and confirming a TPO whilst evidence is provided to example a low level of amenity and a much needed and immediate schedule of works toward restoring a sustainable level of amenity.

Further consideration is in the significant financial burden placed on the Authority of maintaining the TPO; this financial burden will increase with the process of costs associated with the need to respond to all subsequent applications of works.

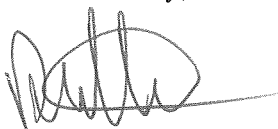
Although the Authority does not become liable for any of the costs of maintaining the tree, as that remains the sole responsibility of the trees' owners, and whilst the Authority does not automatically become liable for any damage that may be caused by the protected tree. The Authority would become liable where consent has been sought, through a Tree Work Application, to do works to the tree and is refused, and where consequent damage caused by the tree could, "reasonably", have been foreseen.

Immediate concerns are that a TPO in this instance would be a wholly unnecessary act and would serve to heighten the Authorities costs, exposure to risk and associated liability.

A TPO is made in the interests of retaining public visual amenity. In this case, public concern is that given the evidenced condition of the tree and the dire lack of either formative or retrospective maintenance, it would be unfortunate to confirm a TPO in this instance as the structural condition of the tree would imply that a safe life expectancy would not exceed 10 years.

In this case a TPO would serve to worsen the tree and any opportunity of public amenity due to constraints imposed. It may be practically observed as case illustration that the council views visual amenity in precedence over the concerns of public health and safety or indeed over its own exposure and tolerance to risk and or liability.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Adrian Hatton', with a long horizontal flourish extending to the right.

Adrian Hatton



FIG - A



FIG. B



FIG - C



FIG - D



FIG - E



Appendix 5

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Arboricultural Survey Schedule

| Tree no | Species | Age | Life exp | Height (est) m | Mat H't m | Crown Spread m | | | | Cr'n Height m | Stem Diam mm | Pys Cat | Stc Cat | Ret Cat | Comments & Recommendations |
|---------|---|-----|----------|----------------|-----------|----------------|---|---|---|---------------|--------------|---------|---------|---------|---|
| | | | | | | N | E | S | W | | | | | | |
| 1 | Japanese cherry (<i>Prunus sp</i>) | Mid | 20-40 | 4 | 9 | 4 | 5 | 5 | 4 | 1.5 | 360 at GL | B | B | C | Naturally small rather stunted appearance Pruning wounds on stem & through branch framework, shallow roots Little value in terms of public amenity RPA: 3.6m |
| 2 | Norway spruce (<i>Picea abies</i>) | Yng | >40 | 4 | 18 | 1 | 1 | 1 | 1 | GL | 130 | A | A | C | Very little value in terms of public amenity RPA: 1.5m |
| 3 | Holly (<i>Ilex aquifolium</i>) | Mid | >40 | 8 | 12 | 1 | 1 | 4 | 4 | 1 | 260 | B | B | C | Heavily suppressed asymmetrical form as a result of proximity to tree 4 RPA: 3.1m |
| 4 | Copper beech (<i>Fagus sylvatica</i> 'Purpurea') | Yng | >40 | 8 | 20 | 5 | 5 | 5 | 5 | 1.5 | 360 | B | B | B | Of some prominence in adjacent street scene Generally balanced form Located in neighbouring garden Raise crown over site to 4.5m to facilitate development RPA: 4.3m |
| 5 | Silver birch (<i>Betula pendula</i>) | Mid | 20-40 | 10 | 14 | 3 | 3 | 3 | 3 | 1.5 | 300 | B | B | B | Located in neighbouring garden Balanced form Little value in terms of public amenity Raise crown over site to 3.5m to facilitate development RPA: 3.6m |

Abbreviations:

Age Class - Yng = Young, Mid = Middle aged, Mat = Mature, OM = Over mature, Vet = Veteran

Phys Cat = Physiological Condition Class- A= Good, B= Fair, C= Poor, D= Dead

Stc Cat = Structural Condition Category- A= Good, B= Fair, C= Poor, D= Dead

Ret Cat = Retention Category- A= High, B= Moderate, C= Low, R= Remove

> = Greater than, <= Less than, est = Estimate, max = Maximum, H't = Height, C'n = Crown, CV = Cultivar, GL=Ground level, exp=Expectancy, m=metres, mm=millimetres

RPA = Root Protection Area

Client: Mr A Hatton

Survey Date: 07 August 2009

Site: 281 Morley Road, Derby

Appendix 5

A retention category (Ret Cat) is given as follows to correspond with table 1 (see Appendix 7 for more detail) of BS5837 2005:

- A- *Trees of a high quality and value and which are in such a condition as to be able to make a substantial contribution for a minimum of the suggested 40 years*

- B- *Trees of moderate quality and value and which are in such a condition as to be able to make a substantial contribution for a minimum of the suggested 20 years*

- C- *Trees of low quality and value and which are in such a condition as to be able to make a substantial contribution for the suggested 10 years
Trees below 150mm diameter, which may be considered for transplanting*