

Confirmation of Tree Preservation Order 592 (12 Hanwell Way, Derby)

Purpose

- 1.1 To make the temporary Tree Preservation Order 592 permanent.

Recommendation(s)

- 2.1 To authorise the Acting Director of Planning and Transportation, Planning and Engineering to confirm TPO No.592 without modification.

Reason(s)

- 3.1 In the interest of public visual amenity.

Supporting information

- 4.1 TPO No. 592 was made on the 14th February 2020 on a single Beech tree in the rear garden of 12 Hanwell Way, Mackworth, Derby, DE22 4AD. A copy of the TPO and TPO plan can be found as Appendix 2 and Appendix 3.
- 4.2 Grounds for making the order - The tree indicated in this Order was proposed for protection in the interests of public visual amenity. The tree is situated in the back garden of 12 Hanwell Way, Mackworth, Derby, DE22 4AD. The tree is located in a prominent position and can be appreciated from the immediate vicinity. 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 area.
- 4.3 In 2019 the Tree Preservation Order Officer, Andy Shervill, was contacted by the owner of the tree requesting that the tree be made the subject to a Tree Preservation Order (TPO). The owner has lived at the property for some considerable time and is now in ill health. The owner is worried that the tree would be removed once he no longer was in residence. The amenity of the tree was assessed using the amenity evaluation rating form. The tree scored 20 points which exceeds the benchmark score of 15 for inclusion within a TPO.
- 4.4 One objection was received on 17th February 2020 (Appendix 6).

- 4.5 Leaf fall and associated detritus are normal and are considered to be a seasonal inconvenience and is not a valid reason to remove a tree. Certainly Derby City Council would not request a tree owner to remove a tree because it drops leaves on the public highway. Paths can be swept to clear the detritus.

The tree was considered to be of adequate condition to justify inclusion within the TPO. There was no evidence to suggest that significant branches were likely to fail in the near future. If branches do become dangerous in the future they could be addressed under the dead/dangerous exception. Just because branches could fail is not a valid reason not to confirm the TPO.

The tree height is estimated to be 14m. Many trees, by their very nature, are tall. Generally the larger the tree the greater the amenity and eco services the tree provides. Law does not limit the height to which a tree can grow and there are many instances where trees growing close to buildings are taller than the building.

The closeness of a tree to a boundary does not mean it cannot be protected by a TPO. The tree trunk would still be just over 3m from the boundary irrespective if it were TPO'd or not.

Tree canopies do not grow to boundaries and many TPO'd tree canopies overhang boundaries. The TPO legislation does not restrict the making of TPO's whose canopy overhangs a boundary. The objector could submit a tree works application to reduce the portion of the canopy that overhangs their boundary and would be reasonable (subject to conditions).

The TPO legislation does not restrict the making of TPO's with regards to closeness to a building. Many TPO'd trees are located close to buildings and where appropriate we do allow the pruning of trees to allow a suitable juxtaposition between a tree and the built environment. Should the tree cause an actionable nuisance mitigation works could be applied for. At the moment we have not received any reports that the tree is causing direct or indirect damage to a property.

Prior to the making of the TPO the objector had the common law right to cut back overhanging branches back to the boundary (the pruning must not destroy the tree). The refusal of the tree owner to allow the objector to carry out their common law right cannot be considered here and is a private matter between the two parties. The objector still has that common law right to cut back overhanging branches however they must submit and have approved a TPO tree works application first. Any permission granted by the LPA would be subject to conditions.

The garden in which the tree is growing is approximately 200m² and has a depth of approximately 14m. The suitability of the tree, in relation to the size of the garden, was assessed when we considered making the tree subject to a TPO and it was judged to be fairly suitable to the area with a slight influence on the nearest inhabited building. Even with a significant influence on the nearest inhabited buildings the tree scored sufficiently to justify inclusion within a TPO.

The tree is located to the north west of the objectors dwelling and will not obstruct direct sunlight to the objectors' house. The tree will have an impact on ambient light but taking the impact into account the tree still justifies inclusion within a TPO. The tree will block light to residential dwellings on Pimlico to the North West however the positive contribution that the tree provides to the area outweighs the shading issue.

Public/stakeholder engagement

5.1 None.

Other options

6.1 To authorise the Acting Director of Planning and Transportation, Planning and Engineering not to confirm TPO No.592 without modification.

Financial and value for money issues

7.1 None.

Legal implications

8.1 The making of the TPO demonstrates that the LPA is fulfilling its duties as laid out in Section 198 of the Town and Country Planning Act 1990.

Other significant implications

9.1 None.

This report has been approved by the following people:

| Role | Name | Date of sign-off |
|---|-------------|------------------|
| Legal Finance Service Director(s) Report sponsor Other(s) | Paul Clarke | 10/06/2020 |

Background papers:

List of appendices:

Appendix 1 – Amenity Evaluation Rating for TPOs.
Appendix 2 – Copy of TPO.
Appendix 3 – TPO Plan.
Appendix 4 – Photographs.
Appendix 5 – Neighbour notification letter and important information text.
Appendix 6 – Objection letter.

| | | | | | |
|--|---|---|--|---|------------------|
| Date: 26/02/2019 | | Surveyed by: Andrew Shervill | | Appendix 1 | |
| Site: 12 Hanwell Way, Mackwoorth | | Rear garden, 12 m tall 7m crown radius, approx 65 years old | | | |
| Species: Copper Beech | | | | | |
| 1 | Size | SCORE (A) | 6 | Suitability to area | SCORE (B) |
| 1 | Very small 2-5m ² | 6 | 1 | Just suitable | 2 |
| 2 | Small 5-10 m ² | | 2 | Fairly suitable | |
| 3 | Small 10-25 m ² | | 3 | Very suitable | |
| 4 | Medium 25-50 m ² | | 4 | Particularly suitable | |
| 5 | Medium 50-100 m ² | | | | |
| 6 | Large 100-200 m ² | | | | |
| 7 | Very large 200 m ² + | | | | |
| 2 | Life expectancy | | 7 | Future amenity value | |
| 1 | 5-15 years | 4 | 0 | Potential already recognised | 2 |
| 2 | 15-40 years | | 1 | Some potential | |
| 3 | 40-100 years | | 2 | Medium potential | |
| 4 | 100 years + | | 3 | High potential | |
| 3 | Form | | 8 | Tree influence (current or future) | |
| -1 | Trees which are of poor form | 1 | -1 | Significant | 0 |
| 0 | Trees of not very good form | | 0 | Slight | |
| 1 | Trees of average form | | 1 | Insignificant | |
| 2 | Trees of good form | | | | |
| 3 | Trees of especially good form | | | | |
| 4 | Visibility | | 9 | Added factors | |
| 1 | Trees only seen with difficulty or by a very small number of people | 3 | If more than one factor relevant maximum score can still only be 1 | | 0 |
| 2 | Back garden trees, or trees slightly blocked by other features | | 1 | Screening unpleasant view | |
| 3 | Prominent trees in well frequented places | | 1 | Relevant to the Local Plan | |
| | | 1 | Historical Association | | |
| | | 1 | Considerably good for wildlife | | |
| | | | 1 | Veteran tree status | |
| 5 | Other trees in the area | | | | |
| 0 | Wooded surroundings | 2 | | | |
| 1 | Many | | | | |
| 2 | Some | | | | |
| 3 | Few | | | | |
| 4 | None | | | | |
| Score column A | | 16 | Score Column B | | 4 |
| The suitable benchmark rating for inclusion within a TPO is 15 | | | Rating A+B | | 20 |
| <p>Typical useful life expectancy of common trees.</p> <p>300+ Yew</p> <p>200-300 Oak, Sweet Chestnut, Plane, Sycamore, Lime</p> <p>150-200 Scots Pine, Hornbeam, Beech, Tulip Tree, Norway Maple, Lebanon Cedar</p> <p>100 -150 Ash ,Spruce, Walnut, Red Oak, Horse Chestnut, Field Maple, Monkey Puzzle, Mulberry, Pear</p> <p>70 - 100 Rowan, Whitebeam, Apple, Gean, Catalpa, Robinia, Ailanthus</p> <p>50 - 70 Poplars, Willows, Cherries, Alders, Birches.</p> | | | | | |

Town and Country Planning Act 1990

The [*Derby City Council (12 Hanwell Way, Derby)* *Tree Preservation Order 2020, Number 592*]

The [*Derby City Council*], in exercise of the powers conferred on them by Section 198 of the Town and Country Planning Act 1990 make the following Order –

Citation

1. This Order may be cited as Derby City Council (12 Hanwell Way, Derby) Tree Preservation Order 2020, Number 592]

Interpretation

2. - (1) In this Order “the authority” means the [*Derby City Council*].
- (2) In this Order any reference to a numbered section is a reference to the section so numbered in the Town and Country Planning Act 1990 and any reference to a numbered regulation is a reference to the regulation so numbered in the Town and Country Planning (Tree Preservation) (England) Regulations 2012.

Effect

3. - (1) Subject to article 4, this Order takes effect provisionally on the date on which it is made.
- (2) Without prejudice to subsection (7) of section 198 (power to make tree preservation orders) or subsection (1) of section 200 (tree preservation orders: Forestry Commissioners) and, subject to the exceptions in regulation 14, no person shall -
 - (a) cut down, top, lop, uproot, wilfully damage, or wilfully destroy; or
 - (b) cause or permit the cutting down, topping, lopping, uprooting, wilful damage or wilful destruction of,

any tree specified in the Schedule to this Order except with the written consent of the authority in accordance with regulations 16 and 17, or of the Secretary of State in accordance with regulation 23, and, where such consent is given subject to conditions, in accordance with those conditions.

Application to trees to be planted pursuant to a condition

4. - In relation to any tree identified in the first column of the Schedule by the letter “C”, being a tree to be planted pursuant to a condition imposed under paragraph (a) of section 197 (planning permission to include appropriate provision for preservation and planting of trees), this Order takes effect as from the time when the tree is planted.

Dated this [14] day of [February, 2020]

[if the Council's Standing Orders require the sealing of such documents:]

[The Common Seal of [Derby City Council]

was affixed to this Order in the presence of –

.....]

[if the Council's Standing Orders do not require the sealing of such documents:]

[Signed on behalf of the [Derby City Council]



.....

Verna Bayliss - Acting Director of Planning and Transportation, Planning and Engineering

Authorised by the Council to sign in that behalf]

[CONFIRMATION OF ORDER

[This Order was confirmed by [Derby City Council] without modification on the
[] day of []]

OR

[This Order was confirmed by the [Derby City Council], subject to the modifications
indicated by [], on the [] day of []]

[Signed on behalf of the [Derby City Council]

Authorised by the Council to sign in that behalf]

[DECISION NOT TO CONFIRM ORDER

[A decision not to confirm this Order was taken by [Derby City Council] on the []
day of []]

[Signed on behalf of the [Derby City Council]

.....

Authorised by the Council to sign in that behalf]

[VARIATION OF ORDER

[This Order was varied by the [*Derby City Council*] on the [] day of [] by a variation order under reference number [] a copy of which is attached]

[Signed on behalf of the [*Derby City Council*]

.....

Authorised by the Council to sign in that behalf]

[REVOCATION OF ORDER

[This Order was revoked by the [*Derby City Council*] on the [] day of []

[Signed on behalf of the [*Derby City Council*]

.....

Authorised by the Council to sign in that behalf]

SCHEDULE

Specification of trees

Trees specified individually

(encircled in black on the map)

| <i>Reference on map</i> | <i>Description</i> | <i>Situation</i> |
|-------------------------|--------------------|---|
| [T1] | [Beech] | [Located in the rear garden of 12 Hanwell Way.] |

[

Trees specified by reference to an area

(within a dotted black line on the map)

| <i>Reference on map</i> | <i>Description</i> | <i>Situation</i> |
|-------------------------|--------------------|------------------|
| [None] | | |

Groups of trees

(within a broken black line on the map)

| <i>Reference on map</i> | <i>Description (including number of trees of each species in the group)</i> | <i>Situation</i> |
|-------------------------|---|------------------|
| [None] | | |

Woodlands

(within a continuous black line on the map)

| <i>Reference on map</i> | <i>Description</i> | <i>Situation</i> |
|-------------------------|--------------------|------------------|
| [None] | | |



Derby City Council (12 Hanwell Way, Derby)
Tree Preservation Order 2020, Number 592

Drawing No: TPO No. 592
Date: 14/02/2020
Map Scale: 1:1250
Contact: Andrew Shervill
Department:
Communities and Place
Telephone Number: (01332) 640666

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View from Pimlico looking south



View from Pimlico looking west

TPO No. 592-Beech



View of tree from garden of 12 Hanwell Way looking north





Derby City Council

Owner Occupier
10 Hanwell Way
Derby
DE22 4AD

| | |
|---------|--------------------------------|
| Team | Natural Environment |
| Contact | Andy Shervill |
| Our ref | TPO/592 |
| Email | andy.shervill@derby.gov.uk |
| Tel | 01332 642105 |
| Minicom | 01332 64066 |
| Date | 17 th February 2020 |

Dear Sir/Madam

TREE PRESERVATION ORDER (TPO) AT 12 HANWELL WAY, DERBY, DE22 4AD

The Council has provisionally placed a TPO on the Beech tree growing in the rear garden of 12 Hanwell Way, Derby DE22 4AD.

You may have already received some correspondence regarding the making of the TPO which was sent out with an error and can be destroyed. This letter and its contents is the correct TPO and contains relevant information.

This TPO has been made so that we can control what works are done to the tree because we believe it contributes to and enhances the street scene.

As your property is near the protected tree, I'm enclosing a copy of the TPO and a formal notice which explains its effect and sets out the grounds for making the TPO, for your information.

Even though the tree is not on your property, you can still object to, or support, the making of the TPO.

Any objections which you may have to the making of the TPO should be sent to us in writing and received by the date shown on the formal notice. Objections are reported to our Planning Control Committee who then decides whether to confirm the TPO or not.

If you do decide to object, then you need to do so on relevant grounds, so you may wish to seek professional advice.

Under the Local Government (Access to Information) Act 1985, your representation may be made available for public inspection.

**Natural Environment, Strategic Partnerships, Planning and Streetpride,
Communities and Place Directorate
Derby City Council, The Council House, Corporation Street, Derby, DE1 2FS**
derby.gov.uk

To view Derby City Council Privacy Notices please visit derby.gov.uk/privacy-notice



The making of this TPO does not prevent the possibility of works being done to this tree; it just means that planning permission is required beforehand. You can apply for planning permission by submitting a free Works to Trees application each time you consider works are required.

If you have any questions then please contact me.

Please note a copy of the TPO, plan and has been sent through the post my mistake which does not state the end of the objection period. The enclosed communication does state the end of the objection period.

Yours sincerely

A handwritten signature in black ink, appearing to read 'A. Shervill'.

Andy Shervill
Tree Preservation Order Officer

IMPORTANT - THIS COMMUNICATION MAY AFFECT YOUR PROPERTY

THE TOWN AND COUNTRY PLANNING (TREE PRESERVATION) (ENGLAND) REGULATIONS 2012 TOWN AND COUNTRY PLANNING ACT 1990

Derby City Council (12 Hanwell Way, Derby) Tree Preservation Order 2020, Number 592

This is a Formal Notice to let you know that on 14th February 2020 we made the above Tree Preservation Order.

A copy of the Order is enclosed. In simple terms, it prohibits anyone from cutting down, topping or lopping any of the trees described in the Schedule and shown on the map without our consent. Some explanatory guidance on Tree Preservation Orders is provided in the enclosed leaflet: - *Protected trees: A guide to tree preservation procedures* - produced by the Department for Communities and Local Government.

Grounds for making the Order: The tree indicated in this Order is proposed for protection in the interests of public visual amenity. The tree is situated in the back Garden of 12 Hanwell Way, Mackworth, Derby, DE22 4AD. The tree is located in a prominent position and can be appreciated from the immediate vicinity. 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 area.

The Order took effect, on a provisional basis, on 14th February 2020. It will continue in force on this basis for a further six months or until the Order is confirmed by us, whichever first occurs. Once confirmed, the Order becomes permanent.

We will consider whether the Order should be confirmed, that is to say, whether it should take effect formally. Before this decision is made, the people affected by the Order have a right to make objections or other representations about any of the trees, groups of trees or woodlands covered by the Order.

If you would like to make any objections or other comments, please make sure we receive them in writing by 20/03/2020. Your comments must comply with Regulation 6 of The Town and Country Planning (Tree Preservation) (England) Regulations 2012, a copy of which is provided overleaf. Send your comments to the Strategic Director of Communities and Place, Derby City Council, The Council House, Corporation Street, Derby DE1 2FS. All

valid objections or representations are carefully considered before a decision on whether to confirm the Order is made.

We will write to you again when that decision has been made. In the meantime, if you would like any further information or have any questions about this notice, please contact Andy Shervill, Tree Preservation Order Officer on (01332) 642105.

Dated: 17th February 2020

Signed:



Andy Shervill, Tree Preservation Order Officer, Derby City Council, Communities and Place Directorate, The Council House, Corporation Street, Derby DE1 2FS

**COPY OF REGULATION 6 OF THE
TOWN AND COUNTRY PLANNING (TREE PRESERVATION)
(ENGLAND) REGULATIONS 2012**

Objections and representations

- 6** (1) Subject to paragraph (2), objections and representations -
- (a) shall be made in writing and –
- (i) delivered to the authority not later than the date specified by them under regulation 5(2)(c); or
- (ii) sent to the authority in a properly addressed and pre-paid letter posted at such time that, in the ordinary course of post, it would be delivered to them not later than that date;
- (b) shall specify the particular trees, groups of trees or woodlands (as the case may be) in respect of which such objections and representations are made; and
- (c) in the case of an objection, shall state the reasons for the objection.

- (2) The authority may treat as duly made objections and representations which do not comply with the requirements of paragraph (1) if, in the particular case, they are satisfied that compliance with those requirements could not reasonably have been expected.

Mr A Shervill
Tree Preservation Order Officer,
Derby City Council,
Communities & Place Directorate,
The Council House,
Corporation St
Derby.
DE1 2FS

Mr B A Peake
10 Hanwell Way
Kingsway
Derby
DE22 4AD
17th Feb 2020

Dear Sirs,

Tree Preservation Order at No 12 Hanwell Way Derby DE22 4AD

I must object to the above Tree to be given a preservation order, for following reasons.

The Tree is a Copper Beach; over hangs the Public Foot Path and causes wide spread difficulty with, leaves, and nuts that cause problems under foot, especially to public foot path at rear of the garden, which runs adjacent to the Boundary, on Pimlico.

Parts of branches get blown off, could cause injury if hit. (Tree is to our west, most winds are westwards)

The Tree is at least twice the height of the Houses.

The Tree is within 10 feet of our boundary.

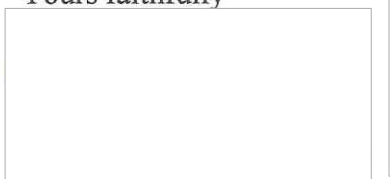
Over hangs our boundary by 15 feet.

The Tree is within 40 foot to our House. Note my Home Building Insurance asks closeness of Trees to the Building.

In the past I have offered to pay and been refused, for branches to be timed that over hang our boundary.

Finally the Tree is far too large for the small gardens of its location. Blocks out the light in our house and is a similar problem to the residents of Pimlico

Yours faithfully



Brian Peake