



PL.17 12/13
Planning Committee
Date: 25th April 2013

Subject: Objection to Tree Preservation Order Middle Rasen 2012.

Report by:	Director of Regeneration and Planning
Contact Officer:	Carol Slingsby Area Development Officer Tel: 01427 676 650 Email: carol.slingsby@west-lindsey.gov.uk
Purpose / Summary:	This report relates to an objection received against a large horse chestnut tree in close proximity to the objector's house.

RECOMMENDATION(S): That members approve the confirmation of the Tree Preservation Order Middle Rasen 2012.

IMPLICATIONS

Legal: None

Financial : None

Staffing : None

Equality and Diversity including Human Rights : The process for making and confirming Tree Preservation Orders is set out in primary legislation and government guidance. Therefore, if all decisions are made in accordance with those statutory requirements and guidance and are taken after having full regard to all the facts, no identified breach to the Human Rights Act 1998 should arise as a result of this report

Risk Assessment : None

Climate Related Risks and Opportunities : None

Title and Location of any Background Papers used in the preparation of this report:

Guidance book - Tree Preservation Orders: A guide to the Law and Good Practice, Chapter 3. Available in the planning department, and also available on the government website at <https://www.gov.uk/government/publications/tree-preservation-procedures-guidance>

Call in and Urgency:

Is the decision one which Rule 14.7 of the Scrutiny Procedure Rules apply?

i.e. is the report exempt from being called in due to urgency (in consultation with C&I chairman)

Yes

No

Key Decision:

A matter which affects two or more wards, or has significant financial implications

Yes

No

1 Introduction

- 1.1 An assessment for a Tree Preservation Order (TPO) was requested by the tree owner, due to concerns that her trees may be in danger of excessive or inappropriate pruning by neighbours.
- 1.2 The assessment was done and a horse chestnut tree and an ash tree met the criteria for a TPO to be made. The TPO Middle Rasen 2012 was made on 11th December 2012 and posted to the tree owner and to any neighbours that may have an interest in or be affected by the trees.
- 1.3 A letter objecting to the TPO due to overhanging branches from the horse chestnut tree was received from a neighbour whose house is the closest to it. The TPO protects two large mature trees, but the objection to the TPO is specifically about the horse chestnut branches.

2 Discussion

- 2.1 The two large trees, a horse chestnut and an ash, protected by the TPO are in a group of smaller trees at the bottom of a rear garden. Due to the size of these trees and the road layout around this property, these two rear garden trees are prominent around the area in local views.
- 2.2 The tree owner is a conscientious owner of her trees and regularly has them professionally inspected and pruned. She requested the TPO assessment as she was concerned a neighbour (other than the TPO objector) might cut back overhanging branches potentially affecting the health or amenity value of the trees, so she wanted to ensure any pruning work would be done to proper arboricultural standards, which can only be assured by a TPO.
- 2.3 The objection points raised by a neighbour are that the TPO would mean they could not prune the horse chestnut branches away from their guttering or back bedroom windows without consent, causing delay in doing the tree work which would be detrimental to the structure of their property. Also, that consent for pruning may cause a cost implication.
- 2.4 A reply letter was sent to the objectors, but they did not clarify if the reply alleviated their concerns or not, therefore the objection has been treated as still being pertinent. The council response to the above objection points was, in brief, that if any branches grow very close to the windows or guttering these can be cut back without needing council consent in order to abate the nuisance. Any additional cutting back to provide a larger clearance to allow for future growth would require an application and council consent. Ideally, applications should be made early enough to maintain a reasonable clearance distance between branches and house, and not wait until a risk of property damage becomes apparent. If pruning work is left until there is a risk of property damage occurring, then the branches could be cut back sufficiently to

abate the nuisance without needing council consent, as described above. An application can take up to a maximum of eight weeks to process, but applications are free of charge and any consent to carry out work has a two year time life span. All consent notices include a standard condition stipulating the pruning work should be done to British Standards for tree work, BS3998:2010, which generally means a tree surgeon is needed rather than someone cutting branches off themselves.

- 2.5 Getting a tree surgeon to do the work is recommended regardless of whether the tree has a TPO or not. This is for health & safety reasons, for insurance reasons, and to ensure works are done to proper arboricultural standards avoiding poor quality work affecting the trees health or amenity value. Pruning done in the wrong place can increase risk of disease and decay developing and quickly spreading, particularly with horse chestnut trees which have weak defence systems. Poor pruning also often stimulates excessive vigorous regrowth resulting in a worse situation than before the pruning was done.
- 2.6 An application was made earlier this year by the tree owner, to cut branches back from the objector's house, which resulted in consent being given. The branches have been cut back in the past and the application was for repeat works. An application can also include consent for repeat works. The tree owner has arranged for a tree surgeon to do the work and will meet the costs herself. Therefore, the objector has not had to make an application and there are no cost implications to the objector.
- 2.7 The TPO covers an ash tree as well as the horse chestnut, and it might be questioned why an ash should be included in the TPO due to the current risk from the *Chalara fraxinea* ash dieback disease. The Forestry Commission have suggested that about 90% of our ash trees are expected to die from the disease, but a report last year from Oliver Rackham refers to other countries that have had the disease for a number of years and have not had 90% of their ash trees killed off. Also that many mature infected trees are not killed, and they continue to survive because the disease kills the shoots which then encourages new shoots to develop. These then become infected and die and more shoots replace them, resulting in a 'witches broom' type of growth. It is also known that at least 10% of ash are expected to survive. As yet we do not know which trees are resistant, which will get infected but still survive, or whether this tree will be affected at all. If the TPO remains but a worse case scenario results in the ash being killed by the disease, a replacement tree of suitable species can be stipulated.
- 2.8 Under common law a neighbour has the right to cut any overhanging branches back to the property boundary line. A TPO does not remove this common law right, but requires council consent before the pruning work is done to ensure it is not detrimental to the health, amenity value and long term retention of the tree.

- 2.9 Confirming the TPO will not prevent any necessary tree work from being carried out. A TPO is not to prevent necessary work from being done, but to allow regulation of any tree work to prevent unnecessary or damaging work from taking place that would have a detrimental impact on the amenity value, health and long term retention of the tree.
- 2.10 LPA's have the power to make a TPO if it appears expedient in the interests of amenity value. A TPO should be used to protect selected trees if their removal would have a significant impact on the local environment and its enjoyment by the public.

3 Conclusion

- 3.1 The horse chestnut tree is a main feature of the tree group adding to the character of the area. Confirming the TPO is the only way to ensure this tree is not indiscriminately cut back or branches removed without good reason. If the TPO is not confirmed, the tree could be severely cut back, cuts made in the wrong places or large diameter branches removed, which could allow decay to develop and spread easier and faster than if the tree is correctly pruned following British Standards for tree pruning.

**TREE PRESERVATION ORDER
MIDDLE RASEN 2012**

LOCATION: The Mallows, Gainsborough Rd, Middle Rasen, LN8 3JX
GRID REF: 508954, 389103
SCALE: 1:1000



SCHEDULE

G1 = 1 x Horse chestnut, 1 x Ash
[G1(1)=H.Ch, G1(2)=Ash]

