



<b>Report Number</b>
<b>Planning Committee</b>
<b>Date: 24<sup>th</sup> August 2016</b>

**Subject: Objection to Tree Preservation Order Ingham No1 2016**

Report by:	Chief Operating Officer
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Purpose / Summary:	This report relates to an objection received against the update TPO made on a sycamore tree which is already covered by a TPO, on land owned by the objector.

**RECOMMENDATION(S): That members approve the confirmation of the Tree Preservation Order Ingham No1 2016**

## IMPLICATIONS

**Legal:**

**Financial : FIN/61/17** There are currently no financial implications. However, members should be aware that as with any future tree application there is a small chance of a claim for costs if an application is refused and then goes to appeal, or if any property damage or injury occurs as a direct result of a refusal decision.

**Staffing :**

**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 :**

**Climate Related Risks and Opportunities :**

**Title and Location of any Background Papers used in the preparation of this report:**  
The Planning Practice Guidance available on the [www.gov.uk](http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/) website at <http://planningguidance.communities.gov.uk/blog/guidance/tree-preservation-orders/>

### 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 A tree application was received to fell a large mature sycamore tree on land owned by the applicant at Ingham. The tree is situated close to the boundary with a residential property called Sycamore Lodge, and the reasons given for the tree removal were due to shading and virtually touching the house, and to avoid further complications.
- 1.2 On validating the application it was noted that the tree species on the application did not match the tree species in the Tree Preservation Order (TPO) document. It was realised that the original TPO document contained errors which could bring into question whether the tree was actually the one supposed to be protected by the TPO.
- 1.3 It was decided that a new TPO needed to be made to ensure the tree was adequately protected, and avoid the protection of the TPO being questioned which could result in the tree being allowed to be felling in the event of an appeal.

## **2 Discussion**

- 2.1 The original existing TPO Ingham 1992 lists the protected tree as a beech. Not only does the document list a different tree species but the TPO plan also shows the tree position approx. 4m further to the west.
- 2.2 A site visit confirmed the tree in the application was a sycamore and not a beech. There was no beech tree present nearby, and no indication that another tree has existed nearby. The very large size of the tree and the uniformity of its domed crown made it clear that there has not been another large tree about 4m from the sycamore during recent decades, as another tree in such close proximity would have affected the growth and spread of the sycamore branches. The sycamore crown has grown and developed with no physical restriction by the presence of other trees. We have no record of a previous application to remove a TPO beech tree from this location. From this, I concluded that the existing sycamore must be the tree that was intended to be protected by the 1992 TPO.
- 2.3 It is possible to vary an existing TPO document, but due to both the species and position being incorrect there would be a risk that anyone could claim that the TPO was changed to cover a different tree, which would not be legally allowed. It is due to this possibility that a new TPO was decided to be the best course of action.
- 2.4 An amenity assessment was carried out to check if the tree still met the criteria under the current assessment method. The tree met the criteria and so the new TPO Ingham No1 2016 was made and the tree application continued.
- 2.5 The TPO application resulted in refusal of consent for the removal of the tree because the reasons given for the work were considered to not

be strong enough to justify the removal of the TPO tree. I advised the applicant that the best option with any possible chance of allowing the tree to be removed would be to appeal against the decision, because even if they object to the new TPO, there is already the old TPO in existence (albeit with errors) regardless of whether or not the new TPO is confirmed. The option of appeal was not taken up by the applicant, but they did object to the creation of the new TPO.

2.6 The objection letter explains the tree is a self-set. The adjacent property was built nearly 20 years ago, and the tree owner is worried that the tree now presents a danger to the residents as it gets bigger and older. He also assumes the roots will undermine the foundations. The house and garden is overshadowed by the large tree, and the tree owner is concerned that limbs will eventually fall off, posing a danger to life. He considers either leaving the tree or pruning some branches will just be delaying the inevitable and could potentially put people at risk.

2.7 In response to the objection comments, virtually all sycamore trees start out as self-sets, but we should not condemn a tree just because of its species, as any tree species has potential to provide amenity value to an area. If someone has concerns about the safety of a large tree, then ideally they should have the tree professionally inspected rather than just cutting it down. Under common law, tree owners have a 'duty of care' to regularly inspect and maintain their trees. Many properties have trees nearby and do not suffer from subsidence. The neighbouring house was built less than 20 years ago so it should have been built to modern standards under the Building Regulations, which includes constructing appropriate type or depth of foundations in relation to soil type, species of tree, and proximity to the tree. Providing the tree was properly considered in foundation design then any risk of potential subsidence should be as low as reasonably practicable. The tree owner has concerns about tree safety in relation to the adjacent property, but the lady at the adjacent property contacted me after my site visit to ask what was happening with the tree as she was not aware that an application had been made. It was explained to her about the tree owner making an application to cut the tree down but she made no comments on the application in support of the proposed work or about how the tree affected her property. A copy of the new TPO and information on how to object against it was also sent to the adjacent property, but no objection was received from them.

### **3 Conclusion**

3.1 The new TPO is just an update to correct errors on an existing TPO. The tree is already covered by a TPO which is still in existence and will not be revoked unless this new TPO is confirmed. Confirming the new TPO will ensure the tree protection continues and does not contain errors.