



Planning Committee

Date: 03 March 2021

Subject: Objection to Tree Preservation Order Sudbrooke No1 2021

Please insert ✓ or N/A to verify this report has been cleared by:-

Finance	Legal (MO)	HR	Directors Sign Off	Management Team
✓	N/A	✓	✓	N/A

To be removed by Committee Admin immediately prior to agenda despatch

Report to be with Committee Admin no later than 5 working days before Chair's briefing and final report no later than 6 working days before Committee.

Report by:

Chief Executive

Contact Officer:

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Purpose / Summary:

This report relates to an objection received against the making of a Tree Preservation Order protecting sections of two tree belts crossing the front and rear gardens of a property on Wragby Road, Sudbrooke.

RECOMMENDATION(S): That Members, notwithstanding the objections made by the owner, approve the confirmation of the Tree Preservation Order Sudbrooke No1 2021.

IMPLICATIONS

Legal: None

(N.B.) Where there are legal implications the report **MUST** be seen by the MO

Financial :

There are no financial implications arising from this report

Staffing : None

(N.B.) Where there are staffing implications the report **MUST** have a HR Ref

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.

Data Protection Implications : None

Climate Related Risks and Opportunities: None

Section 17 Crime and Disorder Considerations: None

Health Implications: None

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

PPG (Planning Practice Guidance) - <https://www.gov.uk/guidance/tree-preservation-orders-and-trees-in-conservation-areas> explaining the legislation governing the making of TPO's.

The Town & Country Planning Act, Part VIII, Chapter I, sections 197 & 198 – the duty to make provisions for protecting trees
<http://www.legislation.gov.uk/ukpga/1990/8/part/VIII/chapter/I>

NPPF - <https://www.gov.uk/government/publications/national-planning-policy-framework--2>

Risk Assessment : Not necessary

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 objection has been received regarding the making of Tree Preservation Order Sudbrooke No1 2020, which was made on 23 September 2020 in response to a tree application, partly as an update to the already existing 1950 Tree Preservation Order (TPO), and partly to add protection to conifer trees not protected by the old 1950 TPO, within the grounds of 23 Wragby Road.
- 1.2 The old Sudbrooke 1950 TPO is a large TPO that covers various areas across Sudbrooke. Legislation has changed several times, and the health and amenity of many trees will have changed over the 70 years since the TPO was made, and some trees may have disappeared altogether. An update of this TPO was started a few years ago in other areas of Sudbrooke. The intention is to continue to update and replace the 1950 TPO in sections, and once all the areas covered by the 1950 order have been updated, the old 1950 order will then be revoked.
- 1.3 The 1950 TPO only protected 'hardwood' trees within the tree belts crossing the front and rear of this property. This left many yew trees unprotected within the outline of the TPO. Many other trees in the garden but outside the areas of the TPO had already been cut down.
- 1.4 An application for tree work was received on 14 July 2020, application ref: 041635, which included a report and plan listing works to many trees within the property on Wragby Road, Sudbrooke. Only trees covered by the TPO could be dealt with in the application.
- 1.5 A tree application is just one of many different types of planning application. The Town and Country Planning Act 1990 (sections 197 & 198), various Central Lincolnshire Local Plan policies, and the NPPF require the planning process to minimise impacts on biodiversity, and to make appropriate provision for the protection and preservation of trees by the imposition of conditions and/or by making a Tree Preservation Order where necessary in the interests of amenity.
- 1.6 Following a site visit on 15th September 2020 as part of the tree application, concerns for the non-protected trees were raised, and it was decided to make a new TPO to cover just the applicant's property due to the impending tree works, and update the rest over other properties at a later date when time allowed. An email was received 22nd September 2020 from the applicant saying tree works would be commencing on the 24th. Having knowledge of the impending works to non-protected trees, time was of the essence to create the various documents for a new TPO, arrange for it to be printed, signed and sealed, and 'served'. Tree Preservation Order Sudbrooke No1 2020 was made on 23rd September, and a copy was attached to the builder's fence across the site entrance, emailed to the applicant/objector, and sent by 1st class post, all on the 23rd.

2 Discussion

- 2.1 An objection was received from the property owner, which is a 7 page document detailing various objection points. The objection letter is included at Appendix A, and this report will refer to the numbered points in turn to provide my response so members can consider both points of view in relation to this TPO. **See Appendix A**
- 2.2 Objection point 1) refers to the effective time & date of the order, and explains when the objector received or saw a copy of the new TPO. He considers it should not become an effective legal document until the receiving party actually receives it. In response, it is appreciated the posted copy of the TPO might not have reached the objector before the tree works was scheduled to go ahead, which is why the TPO was also emailed to the objector, and a copy of the TPO was attached to the fence across the site entrance. According to the TPO legislation and government guidance, a TPO is a valid and legal document on the day the authority makes it. This objection point is more in relation to timing and the scheduled tree works last September rather than whether the trees should or shouldn't be protected by this TPO.
- 2.3 Objection point 2) is regarding the urgency behind making the TPO, and gives various examples of the objector contacting the Department. These appear to be to indicate the Council was aware of proposed tree works and so should have dealt with his application earlier and made the TPO earlier, rather than the TPO being made just the day before tree works were due to start. In response, an informal enquiry asking how long a tree application takes would not normally prompt the updating of a TPO to be started. Even when the tree application was received, the information supplied was checked to see if it was a valid application or if further information was required, and for intended works to various trees the list is checked just to identify any protected tree which are subject to the application process. It is only when that application starts to be processed and a site visit undertaken that the application details are looked at, and the need for further protection to be extended to other trees within the property becomes apparent. This is not an "emergency" TPO and follows the standard procedure for the introduction of a new TPO (being that it is served and thereafter the Local Planning Authority has six months to determine whether to confirm the Order). In discussions with the objector after the TPO was made, I referred to a "sense of urgency" for making the TPO in relation to the available time between processing the application and impending tree works. This point is in relation to timing of the TPO and the tree works and not whether or not the TPO should be confirmed.
- 2.4 Point 3) in the objection letter clarifies that the tree owner is not actually objecting to the need for the TPO, providing it is issued in a non-discriminative nature. This is in relation to the new TPO only being made on the one property. After discussing the impending tree works, time constraints, and amount of work and time needed to update the TPO along the full length of both tree belts, it was decided to initially

make the new TPO on just this property, and the rest would be updated at a later date. I can confirm the full length of these two tree belts has now been updated with TPO Sudbrooke No1 2021 served on 26th January 2021, and all affected owners and neighbours have received a copy of their new TPO.

- 2.5 Point 4) questions why a TPO was not issued previously, and the objector assumes not implementing the new TPO sooner was a mistake by the council, and that because of this mistake the council is now trying to penalize people, and he again refers to the TPO as an emergency TPO. To explain, the 1950 TPO covers large areas of Sudbrooke and affects many properties. Updating the TPO started several years ago, and some areas have already had new TPO's made, or assessments started but not completed. Updating an old TPO is a long-term project that takes up a lot of time and resources. If trees at any property had previously been thought to be in imminent danger due to the old TPO then that relevant section would have been updated at that time, as it has been in this instance. Again, this is not an "emergency" TPO. It is just a new TPO that has been created as a partial update to a very old TPO in response to impending tree works, some of which were considered inappropriate and placing the trees at risk. The point of a TPO is to identify trees that are important to the amenity of the area and to prevent inappropriate work from being done, and it is not a means of penalizing people.
- 2.6 The claim of discrimination against the property in point 5) of the objection letter is very similar to the above point 4), in that the objector is claiming the creation of the TPO is punishing him by preventing his tree work from going ahead, and how do we know other people are not harming their trees. This could be said by anyone who has a TPO put on their trees, as a TPO is generally made when trees are thought to be in danger, whether from inappropriate or unnecessary tree work or due to development pressures. This is a requirement of the protected tree legislation. We can only assess trees for a new TPO or prioritise updating an old TPO to improve tree protection when it comes to our attention that trees might be at risk. Unauthorised tree work and even tree removal does occasionally occur without our knowledge. We cannot do anything about work that we do not know about, but we can take enforcement action when it comes to our attention, and hopefully that acts as a deterrent to some extent. In any event, whilst TPO Sudbrooke No1 2020 (here under consideration) was applied specifically to 23 Wragby Road in response to imminent works, TPO Sudbrooke No1 2021 has now been served to those other properties in the surrounding area.
- 2.7 Also in point 5) the objector claims the TPO has caused him financial loss due to delays in his building work, however, the trees are not near his building or the footprint of the replacement building, with plenty of space between trees and development area, and there is an existing driveway for clear and easy access. The objector says himself in objection point 7) that the new TPO is no closer to the building than the

old 1950 TPO. There is no apparent reason why the creation of this TPO and resulting delay to work to some softwood trees outside the development area would cause delays to the development work.

- 2.8 Objection point 6) is in relation to a misleading amenity statement because it also describes the amenity of the tree belts as a whole and their amenity to the area rather than just relating to that property. Under the TPO legislation an assessment of amenity is about amenity to the surrounding area. It is a measure of public amenity provided by the trees and not about their impact within a site. Trees at this property are an integral part of two longer tree belts which are key features in the area. The trees in each individual property are important for their contribution to the overall impact and feature of the two tree belts.

See Appendix B

- 2.9 Expediency is questioned at objection point 7), and is about whether the TPO is necessary, or is there a need for the TPO. Under national legislation and 'good practice', a TPO should only be made if it is expedient i.e. if there is a good reason for it. If trees were under good management then it would not be expedient to make a TPO, but if trees were thought to be at risk (being felled, pruned or damaged), then it would be expedient to protect them in the interests of amenity. A risk to trees generally arises as a result of development pressures, a conservation area tree application involving inappropriate work, word of someone's tree work intentions, or even changes in property ownership. In this instance, the Council was aware of proposed tree work, some of which was inappropriate, and risks from approved development, as we know from experience that developers don't always abide by required tree protection measures, and a TPO protecting softwoods and hardwoods would strengthen the requirement to protect the trees.

See Appendix B.

- 2.10 Objection point 8)B) is regarding the objectors enquiries to the new TPO, WLDC response, and his financial loss. This has been partially discussed in para 2.7 above, but such issues should be the subject of a complaint rather than a reason whether or not the TPO is confirmed.

3 Conclusion

- 3.1 The trees in the garden are prominent features within the locality, significantly contributing to the character and amenity of the area. The 1950 Order already protects hardwoods, but it is well overdue for updating, and this new TPO will ensure tree protection for both hardwoods and softwoods. The confirmation of this order is the only way to ensure the integrity of the two tree belts is not diminished by work at this property to remove yew trees, or individual trees inappropriately pruned, or trees compromised by development.