



**Planning Committee**

**14 November 2018**

**Subject: Objection to Tree Preservation Order Market Rasen No2 2018**

Report by:

Executive Director of Operations and Head of Paid Service

Contact Officer:

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Purpose / Summary:

This report relates to an objection received against the making of a new Tree Preservation Order protecting two large birch trees within a front garden.

**RECOMMENDATION(S):** That Members, notwithstanding the objections made by the neighbour, approve the confirmation of the Tree Preservation Order Market Rasen No2 2018.

**IMPLICATIONS**

**Legal: None**

**Financial: FIN/142/19/CC**  
**There are no financial implications arising from this report**

**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:**

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>

**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 outline planning application was received, ref: 137764, to erect one dwelling within the front garden of Quinn-a-Mara, Crane Bridge Close, Willingham Road, Market Rasen. The site contains numerous trees within the front garden, and although outline, the application included an intended site layout which involved the removal of several trees.
- 1.2 A tree report was provided with the planning application, giving detailed information on each tree and identifying two birch trees as being category B trees (trees of moderate quality and amenity), of which I am in agreeance with the assessment of the trees. All other trees were category C trees (trees of low quality) and as such should not pose a constraint to development. The tree categories are in accordance with the cascade chart in the British Standards guidance BS5837:2012 Trees in relation to design, demolition and construction.
- 1.3 The Town and Country Planning Act 1990 and the NPPF require the planning process to minimise impacts on biodiversity, and to make appropriate provision for the preservation of trees by the imposition of conditions and/or by making a Tree Preservation Order where necessary in the interests of amenity.
- 1.4 Following a site visit, an assessment was completed for the two birch trees and their contribution to the amenity and character of the area. The results were considered and on balance it was determined that the trees are important features and key to maintaining the green tree'd character in this area of the street, and to compliment the trees on the opposite side of the road. The trees have a remaining life expectancy of at least 20 years, and if these trees were inappropriately pruned or removed the verdant character would be lost for this section of the road, with the trees as a feature not starting until further west along the street where other trees exist. Because of these birch trees being the key components of maintaining structural greenery along this section of the street, it was decided to make a TPO to protect the two birch trees. Tree Preservation Order Market Rasen No2 2018 was made on 18<sup>th</sup> June 2018 and posted to all relevant people, including the tree owner and the adjoining neighbour at Lindum Court.
- 1.5 No objection has been received from the tree owner or their planning agent.
- 1.6 An objection was received 16 July 2018 from the adjoining neighbour to the east at Lindum Court, Willingham Road.

## **2 Discussion**

- 2.1 Having received an objection to the TPO, a response was sent to the objector to address the concerns the objector raised. No further comments have been received, but the objection has not been withdrawn. One of the objection points raised is that the objector is of the

opinion that the TPO was created to give weight to the planning application, and the importance of the birch is being increased to substantiate the reason for development. The WLDC response is that the TPO identifies trees of importance to an area, substantiated by the tree report data and the amenity assessment carried out. The creation of the TPO is to ensure important trees are given adequate and appropriate protection, and if affected by development, full consideration with regards to whether special construction methods or tree protection measures are required, and if the impact would be too great and the application be refused. Whilst TPO's can protect trees due to development proposals it is not usual to consider that a TPO be made with the aim of increasing the prospects of a development gaining permission. Indeed this would not be the case in this application.

- 2.2 The planning application was refused on 28<sup>th</sup> June 2018, prior to the objection being received from the neighbour. Reasons for the refusal included its impact on the verdant character and appearance of the area, and the likely undue pressure it would create on the trees.
- 2.3 Another objection point raised by the objector is that the quality of trees and their importance across the whole site should be considered in a wider context, as various trees were excluded from the provisional TPO. The objector considers the pear and apple trees to be beautiful well shaped trees in keeping with the front garden landscape, streetscape, and contribute to a soft boundary. The WLDC response is that although there are various other trees within the garden, which from surrounding areas appear to be nice trees contributing to the verdant character of the area, they are in fact generally of low quality. A comprehensive tree survey was submitted with the planning application which identified various defects and issues with the other trees in the garden which meant they were not of good enough quality to protect even though superficially they looked nice trees. The apple tree has considerable decay within its stem and has dieback of its branches due to poor health. There is no pear tree in the site. Examples of tree condition from the tree report are; a mature sycamore (T7) dominates the site but is multi-stemmed from a low level with tight compression forks at risk of future failure. Swedish whitebeam (T10) has a basal cavity with significant decay extending down into its roots. Other than the two birch, the other trees are of low quality, category C trees, with the report giving a good description of their form and condition, and are valid reasons why the other trees could not be included in the TPO.
- 2.4 The objector has further concerns regarding proximity of the birch trees to a building. The trees are appropriate distances from existing buildings. If any further applications or an appeal is submitted to develop the site then proximity and the relationship between tree and any future building could well be a serious consideration in any planning application. The retention of the TPO on the two birch would raise the importance of the trees having adequate space to avoid conflict with any future proposal to ensure their retention in a healthy manner.

- 2.5 The objector has concerns that a permanent TPO would not give adequate flexibility of landscaping in an on-going manner. In response, the TPO only regulates proposed work to the two trees covered by the TPO, and has no bearing on work to the rest of the site and other trees. Any proposed work to the TPO birch trees is likely to gain consent if it is appropriate or necessary for good management of the trees.
- 2.6 The objector points out that she is sceptical that her property's environment at Lindum Court would be given equality in consideration either in the planning application or the TPO. In response, the planning application has already been refused, and any application for work to the TPO trees would be considered based on the need and justification for the work balanced against its impacts on the trees future health and retention and impact to the appearance of the trees, but also the amenity they provide to the area. Their appearance and amenity to the area is the only part of the process that could have an impact on the neighbouring property, and the purpose of a TPO is to minimise any negative impacts by ensuring only appropriate work is carried out.
- 2.7 The trees are within the westerly half of the site whereas the objector lives off the east side of the site. The nearest of the two birch to the boundary adjoining the objectors property is roughly 23m away from the boundary. The trees do not overhang or impact on the objector's property or use of the property.
- 2.8 A TPO is not meant to prevent all work from being done to a tree. Trees are living things that occasionally require maintenance. Dead wood can be removed at any time, and any intended pruning of live wood just needs an application asking for consent to carry out works. Tree applications are free, and are a process where any necessary or appropriate work would get consent.

### **3 Conclusion**

- 3.1 The trees in the garden are prominent features within the street scene, contributing to the character and amenity of the area. It is unfortunate that other trees in the garden are not of good enough quality to protect, but the confirmation of this order is the only way to ensure these two trees are not removed, inappropriately pruned, or compromised by potential development without good reason.