

North East Derbyshire District Council

Planning Committee

21 March 2023

**PROPOSED CONFIRMATION OF TREE PRESERVATION ORDER (TPO
192/2022) ON LAND AT THE RECTORY OF ALL SAINTS' CHURCH,
WINGERWORTH.**

Report of the Planning Policy & Environment Manager

Classification: This report is public

Report By: Principal Arboricultural Officer (Planning)

Contact Officer: David Cunningham

PURPOSE / SUMMARY

- Tree Preservation Order (TPO) 292/2022 was made in its provisional form on 12 December 2022. The effect is that the Order applies for six months or until confirmed or modified.
 - Before deciding to confirm an Order, the local authority must take into account all 'duly made' objections and representations that have not been withdrawn.
 - Two objections have been received.
 - The Council's Principal Arboricultural Officer (Tree Officer) believes that there is a foreseeable threat to the tree described as T1 within the Order, which would likely result in the loss of this tree should TPO 292 not be confirmed in the interests of amenity.
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RECOMMENDATIONS

1. To confirm TPO 292/2022, Land at the Rectory of All Saints' Church, Wingerworth without modification.

Approved by the Portfolio Holder – Cllr Cupit, Cabinet Member for Planning & Environment

IMPLICATIONS

Finance and Risk: Yes No

Details: There is no financial or other risk from the confirmation of the Order as the option remains for the tree owners to make an application to seek to undertake works to or remove trees.

On Behalf of the Section 151 Officer

Legal (including Data Protection): Yes No

Details: All proper legal processes have been followed, the land owners have been advised of the making of the provisional Orders and given the opportunity to make comments. Provisional TPOs must be confirmed within 6 months of their making, to retain effect. Failure to confirm the orders within that time would mean they no longer have effect and any protection is lost.

On Behalf of the Solicitor to the Council

Staffing: Yes No

Details: There are no significant implications on staffing resources arising from the action recommended in the this report

On behalf of the Head of Paid Service

DECISION INFORMATION

Decision Information	
Is the decision a Key Decision? A Key Decision is an executive decision which has a significant impact on two or more District wards or which results in income or expenditure to the Council above the following thresholds: NEDDC: Revenue - £100,000 <input type="checkbox"/> Capital - £250,000 <input type="checkbox"/> <input checked="" type="checkbox"/> <i>Please indicate which threshold applies</i>	No
Is the decision subject to Call-In? (Only Key Decisions are subject to Call-In)	No
District Wards Significantly Affected	Wingerworth Parish
Consultation: Leader / Deputy Leader <input type="checkbox"/> Cabinet <input type="checkbox"/> SMT <input type="checkbox"/> Relevant Service Manager <input checked="" type="checkbox"/> Members <input checked="" type="checkbox"/> Public <input type="checkbox"/> Other <input type="checkbox"/>	Yes Details: Consultation has taken place with other officers and with Cllr Diana Ruff

Links to Council Plan (NED) priorities, including Climate Change, Equalities, and Economics and Health implications.

Protecting and promoting the Character of our District including enhancing the natural environment and tackling climate change.

REPORT DETAILS

1 Background

- 1.1 The Council's Tree Officer undertook an inspection of the mature beech tree located within the garden of the Rectory at All Saints' Church, Wingerworth on 22nd November 2022 with a view to serving a TPO. This was in response to concerns that plans were in place to remove the tree due to the amount of shade it cast on the rear garden of the neighbouring dwelling, 2 Barn Cottages located to the east of All Saints' Church.
- 1.2 Section 198 of The Town and Country Planning Act 1990 affords the power for a local authority to make a TPO where it appears to the authority that it is expedient in the interests of amenity to make provision for the preservation of trees or woodlands in its area.
- 1.3 The Council's Tree Officer undertook a TEMPO assessment of T1 from the public domain of Longedge Lane. TEMPO is a field-guide to TPO decision-making and considers all of the relevant factors in the TPO decision-making chain. The Tree Officer determined that T1 is a healthy and mature beech tree and achieved a TEMPO score of 16 out of a possible 25 and is merit-worthy of the special protection afforded by TPO.
- 1.4 An individual Tree Preservation Order (TPO 292) protecting the mature beech (T1) at the rectory of All Saints' Church, Wingerworth was made on a provisional basis on 12 December 2022. The effect is that the Order applies for six months or until confirmed or modified by the Council.
- 1.5 Before deciding whether to confirm an Order, the local authority must take into account all 'duly made' objections and representations that have not been withdrawn. Two 'duly made' objections to the creation of TPO 292 have been received.

2. Details of Proposal and Information

- 2.1 The Rectory is located in a pleasant and semi-rural part of Wingerworth. The site is a well-established, residential part of the village (see figure 1) and immediately opposite Hunloke Park Primary School on Longedge Lane. The tree which is the subject of TPO 292 is a mature beech tree located in the garden of the Rectory. The Rectory abuts the churchyard to the north-east and lies between the church building and Longedge Lane. The main access into the Rectory comes from Longedge Lane via the property drive. The garden is bounded by well-maintained beech hedges and masonry boundary. There is a pedestrian access immediately east of the Rectory garden which allows public access to the churchyard. Directly west of the Rectory is the Lychgate which serves as main pedestrian access into the churchyard. Car parking for church visitors is provided further west off Longedge Lane. The canopy of T1 provides an interesting and soft compliment to the steeple of All Saints' Church and can be seen from each of the mentioned points of access into the church grounds, thus making a valuable contribution to the semi-rural character of the area.



Figure 1: Location Plan showing position of T1 in relation to the Rectory and neighbouring properties.

- 2.2 T1 is a large mature beech tree (*Fagus sylvatica*), growing in the south-east corner of the Rectory garden. T1 is an open-grown tree which is free from direct competition of adjacent trees, as such, the crown of T1 has been allowed to develop into a wide and spreading form. The crown comprises of five principle stems growing from a shared stool. The stool of T1 has become a complex network of unions between each of the stems, supported by a series of crossing branches within the upper crown, some of which have fused through the process of anastomosis. These crossing and fused branches which originate from each of the principle stems create strong natural braces and act as physical support to the unions of the shared stool.



Figure 2: T1 When viewed from Longedge Lane



Figure 3: T1 When viewed from the footpath of the pedestrian entrance immediately east of the Rectory leading from Longedge Lane to the rear of the churchyard.

Representations Received

- 2.3 Comments have been received from the landowner's representative body, the Derby Diocesan Board of Finance Limited (DBF Ltd) raising the following **objections**:
- Placing a TPO will place an unnecessary burden on their ability to manage the ongoing maintenance of this tree.
 - DBF Ltd do not wish to remove the tree but do seek to manage the tree to ensure it remains healthy and manageable and maintain a cordial relationship with their neighbours (2 Barn Cottages) who have raised concerns about the tree.
- 2.4 Comments have also been received from the neighbouring residents at 2 Barn Cottages raising the following **objections**:
- The tree is in the private grounds of the rectory which the public do not have access to.
 - It is a standalone single tree and not a collection of trees.
 - It is surrounded by multiple large trees which are in a publicly accessible area.

- The owners of the tree and land (Diocese of Derby) have sought professional advice and are happy for work to be done on it (either trimmed or felled) if costs are covered by the occupants of 2 Barn Cottages.
- Would like for the tree to be trimmed easily without having to go through the application processes to allow sunlight to their garden.
- The tree is very close to the Church building potentially causing damage
- The roots of the tree potentially cross the boundary to 2 Barn Cottages and the boundary stone wall on the drive has been repaired twice by the Church dues to roots pushing out the wall.
- Concern that they plan to have their driveway done this year and worry that a TPO would affect what work they could do.
- Leaf shedding is excessive, requiring continuous cleaning of gutters from autumn through to winter to prevent damage to our property.

Officer Response to Issues Raised

- 2.5 In response to the issues raised, the requirement to make an application to undertake work to a TPO protected tree is not considered an unreasonable burden. A tree preservation order is normally made to protect trees in the interests of amenity. This involves an assessment of the trees visibility, impact size and form. A TPO can protect trees as individual trees, groups of trees, woodland or areas of trees and it is not necessary for these to be in publicly accessible locations. No claim of damage to the church building has been raised by DBF Ltd. and leaf fall is considered a predictable and minor seasonal nuisance, with the associated clearing of leaves part of routine property maintenance.
- 2.6 In terms of undertaking works to facilitate light penetration to the neighbour's garden, *BS 3998:2010 Tree work – Recommendations* is the British Standard of working practice concerning established trees. The British Standard takes the form of guidance and recommendations and sets out a number of often appropriate management prescriptions to manage issues around light and shade which would allow for the retention of T1. These often appropriate management prescriptions include, crown thinning, crown lifting, and crown reduction. Should an application for such works be received in accordance with the guidelines and recommendations given with BS 3998:2010, it is likely to be supported in principle.
- 2.7 It is noted that T1 is surrounded by multiple large trees which are in a publicly accessible area. The churchyard at All Saints' Church is well-furnished with numerous trees of differing types and sizes. However, the types and sizes of trees in immediate proximity to All Saints' Church are entirely ever-green species of small to medium stature. The pedestrian entrance to the churchyard, via the footpath from Longedge Lane and east of the Rectory, is characterised by a visual screen of evergreen species of medium stature, including, yew (*Taxus baccata*), cherry laurel (*Prunus laurocerasus*) and Lawson cypress (*Chamaecyparis lawsoniana*). The grounds immediately around the church building are again characterised by numerous examples of evergreen species, including yew and infrequent examples of Portugal laurel (*Prunus lusitanica*) and holly (*Ilex aquifolium*). It is not until a person reaches the rear of the site that trees of large stature and deciduous habit are met. T1 is a mature

deciduous tree of significant stature which is highly visible from Longedge Lane. T1 is the only tree of significant stature in the gardens of the Rectory. The deciduous character of T1 provides the street scene with attractive seasonal variance through leaf-flush, autumn colour and eventual leaf-fall, which other evergreen species do not provide.

- 2.8 The residents of 2 Barn Cottages have raised an objection that the owners of the tree have sought professional advice and are happy to have the tree trimmed or felled. The Tree Officer can find no arboricultural reason why a professional in the field of arboriculture would recommend the removal of T1. T1 is a mature and well-established tree suitable for its location and, although complex in structure, it is free from significant physiological and structural concern. This objection does however, give rise to concerns that the tree is under threat of removal or inappropriate pruning.
- 2.8 The residents of 2 Barn Cottages have also raised concern that they have had the boundary stone wall on their drive repaired twice by the Church, due to damage arising from roots pushing out the wall. Tree roots can, through their annual growth, exert enough pressure to displace lightly loaded structures such as masonry boundary walls. However, this ability to displace structures is mostly associated with the roots of larger diameter which form the mechanical root plate of the tree; usually found within close proximity to the stem. The Tree Officer measured T1 to be 9 metres from the boundary wall of 2 Barn Cottages. *BS 5837:2012 Trees in relation to design, demolition and construction – Recommendations*, advises that the minimum distance between planting trees capable of achieving a large size and masonry boundary walls should be 2 metres, so to avoid direct damage to a structure from future tree growth. The Tree Officer believes that T1 is far enough away from the boundary wall of 2 Barn Cottages to avoid causing direct damage to it. The Tree Officer concludes that any direct damage caused to the boundary wall would likely have been from the line of evergreen trees growing immediately adjacent to the boundary wall from the churchyard.
- 2.9 The residents of 2 Barn Cottages are particularly concerned that if a TPO was applied and the roots cross their boundary, this could affect their plans to undertake works to their drive. *BS 5837:2012* takes account of current practice regarding planning for the management, protection and planting of trees in vicinity of structures, and for the protection of structures near trees. The British Standard takes the form of guidance and recommendations. Provided any works undertaken to the drive complies with this guidance, then any application to undertake work to the roots of TPO protected trees would be likely to be supported in principle.

3 Reasons for Recommendation

- 3.1 A tree preservation order is normally made to protect trees in the interests of amenity and this involves an assessment of the trees visibility, impact (including the contribution to the wider landscape) and the trees size and form. Before confirming an Order the Council should satisfy itself that the tree(s) would bring a reasonable degree of public benefit in the present or future. In this case officers consider that the tree offers a significant level of amenity to the area

and is readily visible from public viewpoints along the highway. The tree has been assessed by the Council's Tree Officer using TEMPO, an established scoring mechanism, which brings an element of objectivity to the process and has been found to be a healthy and mature beech tree merit-worthy of the special protection afforded by TPO in the interests of amenity.

3.2 Evidence suggests that the landowner perceives T1 as a liability rather than an asset and consequently the Tree Officer believes that there is a foreseeable threat to T1 which would likely result in the loss of the tree should TPO 292 not be confirmed.

4 Alternative Options and Reasons for Rejection

4.1 To decide to not make the TPO. This option was rejected because it would leave the tree unprotected and could lead to the tree being removed which would be detrimental to local amenity.

DOCUMENT INFORMATION

Appendix No	Title
N/A	
Background Papers (These are unpublished works which have been relied on to a material extent when preparing the report. They must be listed in the section below. If the report is going to Cabinet you must provide copies of the background papers)	
N/A	