



PLANNING COMMITTEE

15th May 2014

REPORT OF THE HEAD OF REGENERATION - DEVELOPMENT AND DELIVERY

CONFIRMATION OF TREE PRESERVATION ORDER 3 OF 2014 AT 123 BROADWAY WEST, WALSALL WS1 4DW.

1. PURPOSE OF REPORT

To seek the confirmation of the Tree Preservation Order 3 of 2014.

2. RECOMMENDATIONS

The Committee is recommended to:

- (i) Confirm the Walsall Tree Preservation Order 3 of 2014 in An unmodified form. A plan of the Tree Preservation Order and a schedule of the trees are attached to this report.
- (ii) Support the reason for making the Tree Preservation Order set out in the report detail, paragraph 10.
- (iii) Note that two representations have been received in respect of the making of this Tree Preservation Order.

3. FINANCIAL IMPLICATIONS

Within budget, in general, new Tree Preservation Orders generate additional applications for consent and increase officers' workload.

4. POLICY IMPLICATIONS

Within Council policy – YES

5. LEGAL IMPLICATIONS

The owners and future owners of this site will be required to apply for Council permission if they wish to fell or prune any tree protected by the Tree Preservation Order. Failure to do this renders anyone carrying out unauthorised works to trees liable to criminal proceedings.

6. EQUAL OPPORTUNITY IMPLICATIONS

Not applicable.

7. ENVIRONMENTAL IMPACT

The management of Walsall's tree cover through the administration of the Tree Preservation Order system has positive implications in protecting trees for their visual and environmental benefits. Removal of protected trees is often necessary because trees have a finite lifespan and may also cause nuisance or damage. In these instances the Council has to decide whether the removal of protected trees is justified. In the event that felling a tree is permitted, the Council can secure replacement planting to maintain tree cover.

8. WARD(S) AFFECTED

The Tree Preservation Order 3 of 2014 is located within the Palfrey Ward.

9. CONSULTEES

Owners and near neighbours were sent copies of the Tree Preservation Order and invited to make representations to the Council in either opposition or support of this Tree Preservation Order. Any response is described within the report.

REPORT DETAIL

10. The Tree Preservation Order 3 of 2014 was made on 25th February 2014 following the submission of an application for an outbuilding in the rear garden which would have resulted in the removal of a mature Eucalyptus, which is visually prominent and protected for the following reasons:
 - The tree forms a prominent landscape feature in the local area and will continue to contribute to landscape quality in the future.
 - The tree adds to the amenity and visual diversity of the immediate area.
 - The tree is under threat of removal through an application to erect a single storey detached outbuilding (planning application reference 14/0066/FL), to be used as a games room, study and for storage.
11. The minimum six week period allowed for objection to the Order expired on 8th April 2014. Two letters of representation have been received - one from the property owner's agent with further information being received from the property owner himself. The agent's objection letter makes comments as follows:
 - We have confirmation we can cut the tree in question down.
 - The tree is sited to the rear of the property so has limited visibility from the street scene.
 - The making of the TPO was a clear case to restrict development.

The property owner's objection letter outlines the events which led to the making of the TPO, which can be summarised as follows:

- The owner contacted Mr. Cook (Council tree officer) to check if the tree was protected or not on 7th November 2013, and was given written confirmation that it was not.
- The owner hired the services of an architect in December 2013 to submit plans for the house and outbuilding.
- The Council's planning case officer visited the site in mid January to inspect the site in relation to the planning application.
- The owner advised the Council's planning case officer that the tree did not have a TPO.
- The Council's planning case officer sent out a tree inspector on the day the owner was flying out to India. The owner spoke to Mr. Gibson (Council tree officer) on 28.01.2014 whilst on the plane.
- The owner told Mr. Gibson he was disappointed that he was told there were no tree issues.
- The owner only considered plans for an outbuilding after receiving confirmation that there was not a Tree Preservation Order.
- The Council's planning case officer should have checked and verified the status of the tree. If this had been done, it would not have gone this far. Especially as he was informed when the work would be done and the TPO arrived the weekend before this.
- The owner spoke with Mr. Cook who advised that the planning case officer and Mr. Gibson had not consulted with him regarding the status of the tree. What was the motive behind this?

12. Officers' responses to these comments are as follows;

- The Council's records indicate that Mr. Singh called the Council on 7th November 2013 to check the protected status of the tree. He was sent a confirmatory e-mail advising that the tree was not protected.
- Tree officers received a formal internal consultation for a planning application to erect an outbuilding in the rear garden of the property on 22 January 2014. Trees, regardless of their protection status, are material considerations in the planning process. As part of this process, a tree officer arranged to visit the site on 28 January 2014 and noted the tree details and its position in the garden. The tree officer decided that the tree was of good shape, form and condition, and worthy of inclusion in a Tree Preservation Order. A Tree Preservation Order was served on 27 February 2014.
- The tree is situated in the rear garden of the property but is clearly visible above the houses from Broadway West. It is also clearly visible from the allotments and public parking area in Broadwalk Retail Park to the south, indicating it has considerable amenity value. Its amenity

value is heightened due to the fact it is evergreen and therefore highly prominent in the winter months when the deciduous trees have lost their leaves. Officers do not agree with the agent's representation that the tree is only visible from the rear of the property.

- The purpose of a Tree Preservation Order is to provide for the protection of trees if it is considered that their removal will be detrimental to the amenity value of an area and that they are under threat of removal. Planning permission overrides the provisions set out in legislation. A Tree Preservation Order highlights the amenity value of a tree, or trees, but is only one consideration in the formal planning application process. This Order was made, not to restrict development but to protect an important tree. This application was subsequently refused on grounds additional to the presence of the tree. To date, the applicant has not exercised his right to appeal to the Planning Inspectorate over the refusal of planning permission. It is considered that officers have made this Tree Preservation Order appropriately in response to a threat to a significant tree.
- The paragraphs above have outlined the purpose and process for making the Tree Preservation Order as well as dealing with some of the objections received. The owner's main objection relates to the council making a Tree Preservation Order after he had carried out checks on the presence of a Tree Preservation Order and ascertained that no Tree Preservation Order was in place when he made the enquiry.
- The owner made checks regarding the protected status of the tree and, at the time of those checks, the tree was not protected. (All calls are logged in some detail together with the responses given.) Subsequently, a planning application was submitted which would have involved the removal of trees and a Tree Preservation Order was made almost 4 months from the date of the original enquiry. The owner therefore had almost 4 months to fell any trees. Checks on the presence of a Tree Preservation Order are a factual record of the situation at the time of the enquiry and do not preclude the council making an Order in the future. Tree Preservation Orders are an important environmental protection measure. Officers considered whether making a Tree Preservation Order was a reasonable and routine response to the planning application. As a result, the Eucalyptus was made the subject of a TPO due to its high amenity value and the contribution it makes to the aesthetic and landscape value of the area.

13. Assessment by officers showed that the tree fulfilled all the criteria required under the Tree Preservation Regulations and that the tree's inclusion in a TPO was justified. In addition to making representations on the confirmation of this Tree Preservation Order which Planning Committee is considering, the owner has the right to submit an application to undertake works to the tree, the merits of which will be considered by the council. The owner also has the right to appeal against the refusal of the planning application for the outbuilding. If the Tree Preservation Order is not confirmed, the tree owner would be able to remove the tree with no duty to replace it. The removal of the tree, with no suitable replacement would be detrimental to the amenity, aesthetic and

landscape value of the area. The Committee is therefore recommended to confirm Tree Preservation Order No 3 of 2014 in an unmodified form so that future works to this important tree can be regulated.

16. **CONTACT OFFICER**

Cameron Gibson - Extension: 4741.

17. **BACKGROUND PAPERS**

File PD1/17/960 relating to Tree Preservation Order 3 of 2014.

Simon Tranter,
HEAD OF DEVELOPMENT AND DELIVERY

SCHEDULE

TPO 3 of 2014 SPECIFICATION OF TREES

Trees specified individually (encircled in black on the map)

Reference on map	Description	Situation
T1	Eucalyptus	Approximately 9m from the rear boundary and 2.5m from the boundary with 121 Broadway West.

Trees specified by reference to an area (within a dotted black line on the map)

Reference on map	Description	Situation
None		

Groups of trees (within a broken black line on the map)

Reference on map	Description	Situation
None		

Woodlands (within a continuous black line on the map)

Reference on map	Description	Situation
None		

TPO 3 of 2014

123 Broadway West, Walsall WS1 4DW.

