



## PLANNING COMMITTEE

22<sup>nd</sup> March 2018

### REPORT OF THE HEAD OF PLANNING, ENGINEERING AND TRANSPORTATION – DEVELOPMENT CONTROL

#### CONFIRMATION OF TREE PRESERVATION ORDER NO. 10 OF 2017 AT 4 CARRICK CLOSE, PELSALL WS3 5BE

#### 1. **PURPOSE OF REPORT**

To seek the confirmation of the Tree Preservation Order No. 10 of 2017.

#### 2. **RECOMMENDATIONS**

- i. Confirm the Walsall Tree Preservation Order No. 10 of 2017 in an unmodified form. A plan showing the Tree Preservation Order is 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 four representations have been received in respect 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 sometimes 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 10 of 2017 is located within Pelsall 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.

10. **REPORT DETAIL**

Tree Preservation Order 10 of 2017 was made using the Head of Service's delegated powers on 12<sup>th</sup> October 2017 as a result of the property being put up for sale and anomalies in the existing Tree Preservation Order resulting in it being unenforceable. It protects a mature Lime tree for the following reasons:

- The tree is a prominent 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 at risk from felling or severe pruning through a change in property ownership and a lapse in the existing formal protection.

The minimum six-week period allowed for the submission of representations expired on 23<sup>rd</sup> November 2017. One letter of support and three letters of objection have been received from near neighbours. The letter of support comments as follows:

- We think it is a lovely tree and it is nice to look at it out our lounge window. We hope we can continue to do so.

The letters of objection comment as follows:

- Branches break off it and damage cars, greenhouses and properties.
- The leaves are a nuisance.
- It is too large to be so close to houses.
- It causes a lack of light to the properties in Carrick Close, Coven Close and Groveside Way.
- There are a lot of lovely trees approx. 50 yds away on the common.
- The issue of the TPO means that the tree has not been pruned.
- The tree has shown signs of being unstable in high winds.

- If the tree fell over it would cause significant damage to property or garden structures.
- We regularly have drainage problems which may be attributed to the tree roots.
- As the tree is deciduous, considerable time, effort and money is spent on disposing of the leaves. If the TPO is confirmed, will we be exempt from any charges in respect of collection and emptying of the brown wheelie bins?
- Since the Council is preventing the owner from restricting the tree from being able to cause damage to our properties, will the Council confirm that we are covered against any damage?
- If the Order is confirmed, will the Council cover the increase in our insurance premiums?
- We seek assurances from the Council that there is cover for death and/or injury resulting from the fall of the tree or any part thereof.
- We recommend the Council ensure the tree is properly pruned and maintained.

The Officer's response to the objections are as follows:

- It is unclear if the branches that fell from the tree were alive or dead. However, it is not uncommon for an amount of small diameter (<1cm) live branches to fall from most species of tree, particularly after adverse weather conditions. This alone would not be sufficient to justify significant pruning works or even felling of a tree. In addition, most trees get a certain amount of deadwood as part of the trees natural growing process. The removal of dead branches is exempt under the Tree Preservation Regulations, does not require the formal consent of the Council, and can be undertaken at any time.

It is noted that consent was granted in November 2011 for various pruning works that would help reduce the potential for falling branches. It is unclear whether this work has been undertaken although at the time of my site visit it was clear that some further work to reduce the density of the canopy, raise the low hanging branches and remove dead branches would be beneficial to its amenity value, to its long-term health and to reducing its impact on the living conditions of the nearby properties.

It is noted that the tree will cause a degree of seasonal inconvenience in terms of shedding leaves and other debris. However, such issues are an unavoidable consequence of owning a property close to a protected tree and do not justify the removal of a prominent healthy specimen such as this. This approach is supported by the Planning Inspectorate as referenced in the Decision Notice for application 15/1190, where a large Sycamore tree was proposed for removal.

- It is recognised that large trees near houses may give rise to concerns over their safety, particularly in adverse weather conditions. However, as self-optimising living organisms, trees move in windy weather to optimise streamlining and dissipate stresses placed on the tree as part of their natural survival process. The Lime tree was last subjected to a visual assessment by myself in July 2017. At that time, the tree appeared healthy and well rooted in the ground and there were no foreseeable concerns.

However, the tree is the responsibility of the person who owns the majority of the land that surrounds its base. They have a duty of care to ensure the tree remains as safe as can reasonably be expected, which normally entails having the tree

professionally inspected on a regular basis, and any recommendations adhered to.

- It would not be uncommon for tree roots to have entered the drain(s) in the area. However, tree roots only enter a drain where there is a pre-existing fault that the roots can exploit. The solution is to repair the drain so that there are no gaps in the drain run for the roots to exploit. Once repaired, it is highly unlikely that roots will enter the drain and therefore any blockages will be the result of other issues.
- The Council's records show that two applications to undertake works to the Lime tree have been received in the past. The first application in 2008 was invalid and subsequently withdrawn from the system due to the applicant's failure to provide the information necessary to validate the application. The second application in 2011 requested various pruning works after a pre-application site visit between the property owner and myself. This application was obviously granted consent. At no point has an application been made to fell or remove the tree and the comments that the Council "... is preventing the owner from restricting the tree from being able to cause damage to our properties..." is based on false information. The Council's Tree Officers always advise that any person has the right to apply for whatever work they see fit, regardless of whether pre-application advice has been sought or not. As no application to fell the Lime tree has been made to date, the Council cannot be held responsible for any damage, directly or indirectly, that the tree may cause.
- The Tree Preservation Order does not transfer responsibility for the tree to the Local Planning Authority. As previously mentioned, the tree remains the responsibility of the owner of the land that surrounds the base of the tree, and it is therefore their responsibility to ensure that adequate insurance cover is in place.
- Officers have taken account of the representations received. It is considered that the points raised do not outweigh the benefits that the tree brings to the locality, and do not justify removing the formal protection of a highly prominent tree that contributes significantly to the amenity, aesthetic and landscape value of the area. The Planning Committee is therefore recommended to confirm Tree Preservation Order No. 10 of 2017 in an unmodified form

11. **CONTACT OFFICER**

Cameron Gibson - Extension: 4741

12. **BACKGROUND PAPERS**

File PD1/17/977 relating to Tree Preservation Order No. 10 of 2017.

**Steve Pretty,**  
HEAD OF PLANNING, ENGINEERING AND TRANSPORTATION.