

REPORT FROM: THE ASSISTANT DIRECTOR, PLANNING, BUILDING
CONTROL AND REGULATORY SERVICES

TO: COLNE AND DISTRICT COMMITTEE

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**CONFIRMATION OF TREE PRESERVATION ORDER
TPO/No.3/2024 – Oakfield Skipton Old Road Colne BB87AE**

PURPOSE OF REPORT

To request members consider an objection and to confirm Tree Preservation Order,
TPO/No3/2024 – Oakfield Skipton Old Road Colne BB87AE

RECOMMENDATIONS

- (1) That the Tree Preservation Order (TPO/No3/2024) be confirmed

REASONS FOR RECOMMENDATIONS

- (1) The tree was under threat of removal as a S211 Notification for Works in the Lidgett and Bents Conservation Area was received for the tree to be felled.
- (2) The tree is in a prominent position and contributes to the visual and landscape amenity of the area.
- (3) The tree evaluation system used to determine suitability for a Tree Preservation Order found the tree was found to be suitable for protection.

ISSUE

1. Under the Town and Country Planning Act 1990 (the “1990 Act”) and the Town and Country Planning (Tree Preservation) (England) Regulations 2012 (the “2012 Regulations”) the Borough Council has the power to make and to confirm Tree Preservation Orders (TPO). TPO No.3 2024 authorised under delegated powers was served on all the parties whom the Council is statutorily required to notify and took effect on the 17th October 2024.

2. The purpose of a TPO is to protect the tree or trees concerned in the interest of visual amenity and, to this end, to control their management and replacement if they must be removed. The presence of a TPO does not prevent works to the tree being undertaken, but the TPO does give the Borough Council the power to control any such works or require replacement if consent is granted for trees to be removed.
3. Tree Preservation Order No.3 2024 was made following the receipt by the Borough Council of six weeks' notice of intention to remove one Horse Chestnut from the front garden of Oakfield Skipton Old Road Colne. (SEE Appendix 1) Under s211 of the 1990 Act it is a defence to the offence of removing a tree in a Conservation Area if the person undertaking the works has provided 6 weeks' notice to the local planning authority in advance of doing so. The service of such a notice effectively leaves the Borough Council in a position where it must either accept the notice and allow for the tree to be removed or to take further protective action by making a TPO.
4. The s211 received was sent in by a local Arboricultural Consultant, citing previous works to wall has damaged the trees' roots of which the tree is showing signs of decline. The position of the tree and the fact that it is leaning towards the road *"future safety cannot be reasonably assured and as such felling is required"*.
5. Prior to seeking consent to raise a TPO, the Council's Environment Officer visited the site to inspect the tree and completed a 'Tree Evaluation Method for Preservation Orders' assessment (TEMPO). This method, developed by a Registered Consultant of the Arboricultural Association, is a systematised assessment tool and has been widely used across the arboricultural profession.
6. Whilst there were minor signs of crown dieback at the top, at the time of inspection, the tree appeared to be in an overall good condition with healthy buds throughout the crown and 'TEMPO' assessment scored relatively highly (see appendix 2) and deemed the tree as suitable for the making of a TPO.
7. The Emergency TPO was put in place on the 17th October 2024 and a period of 28 days has been allowed for objections to the order to be raised. One objection was received.
8. The tree contributes to the visual and landscape amenity of the area and therefore, is suitable for a TPO.

OBJECTION TO THE ORDER

An objection to the Order was submitted to the Council by the tree owner at Oakfield Skipton Old Road Colne. A summary of the objections is listed below.

- *"The only reason for contacting the Pendle Borough Council was to minimise the danger to the General Public. Rather than being an amenity it has become a dangerous liability".*
- *"I made contact with my Insurers Solicitor Irwin Mitchell who insisted that I immediately contact Pendle Borough Council due to the impending danger. I understand that Mr Roland Jones was scheduled to meet with the experienced and highly regarded Arborist Mr. Iain Tavendale".*
- *"As a respected professional Arborist Iain Tavendale has been commissioned to provide written reports for Pendle Borough Council and has been paid for his*

services by Pendle Borough Council for this work. This meeting was subsequently cancelled by Mr Jones and a TPO was subsequently issued no further meeting was scheduled by Mr. Jones”.

- “I had raised concerns to Mr Jones regarding this tree due to its history and the constant falling of branches onto the public Highway. One recent potentially lethal event was brought to the attention of Mr Jones and Pendle Borough Council when a ten foot long branch broke from the tree. The branch was extremely heavy and crashed onto the Skipton Old Road Highway”.
- “It should be noted that Mr Jones has previously liaised with Mr Tavendale regarding this Horsechestnut Tree and guided him to put a report in as Mr. Tavendale recommended removal following a site visit. Mr. Jones recommended and guided Mr Tavendale to put in an application under the Tree within a Conservation Area route. This advice was followed. The Solicitors Irwin Mitchell insisted six weeks was too long to wait for a response. I relayed this to Pendle Borough Council”

It goes on to state:

- “In getting to the “root of this problem” I site consequences when Lancashire County Council Highways carried out; wall removal, tree removal, soil removal, root removal, concrete barrier installation, drain installation and wall reinstatement in 2021/2. None of which followed British Standards in relation to the protection of trees”.
- “The affect has been tantamount to butchery with no thought given to following British Standards for construction or protection of this Horsechestnut tree. The work was adjacent to the tree and within one metre of the tree itself. Photos have been provided to Pendle Borough Council but they have simply been ignored”.
- “Lancashire County Council have quoted that at the time of their extensive excavations in 2021/2 a TPO existed on the Horse chestnut tree dating back to 1963. This creates confusion as Mr Jones quoted to Mr Tavendale that no TPO on this tree existed”.
- “There are a number of issues to be addressed; Was this horse chestnut tree already protected by a Tree Preservation Order. No information has been provided by Lancashire County Council regarding the health or potential issues with the tree following their excavation work. No information has been provided by Pendle Borough Council in relation to the present or historical health and safety aspects of this Horse chestnut tree.
- No information has been provided by Pendle Borough Council regarding the potential risk that this Horse chestnut tree poses. No history has been provided by Pendle Borough Council about the history of this tree and the digging out of the area around this tree by Lancashire Council Highways or any subsequent site visits. This tree is shedding branches. This tree is suffering from terminal root.
- No reason has been given as to why I was directed by Pendle Borough Council to get a tree report then to have the recommendation of a respected and experienced Arborist, Iain Tavendale, simply ignored.

Response to the Objection

The Council’s Environment Officer (I), was first contacted by the tree owner, via email in February of 2023. The basis of the email was that the Horse Chestnut tree on his land was in a dangerous condition and was overhanging a road. Subsequent to a number of contacts I inspected the tree and, at the time of inspection, did not see anything that concerned me with regards to the tree being unsafe. As is good practice ongoing monitoring would be necessary.

Another email was received on the 11th September 2024 advising that branches had come out of the tree, fallen onto the road and that this needed my attention. The owner was advised to consult a tree surgeon to assess the tree.

I received a telephone call from the consultant who advised that he was going to submit a s211 Notification for the trees' removal based on the fact that the tree had roots removed by Lancashire County Council in 2021 and was now in decline. I advised that once in receipt of this I would inspect the tree again. A s211 was received by the Council on the 1st October 2024.

A site visit was carried out on the 9th October and while some minor dieback was noticed at the top of the crown, there was nothing evident at that time that would suggest the tree is dangerous and needs removing. A TEMPO Assessment was carried (Appendix 2) out that suggested the tree was worthy of a TPO. After the inspection I advised the consultant that I did not agree with his assessment.

By this time there were numerous objections to the s211 sent in by local residents objecting to the removal of the tree.

On the 16th October an email was sent to the Council by the owner advising that he had advice from his solicitors that said waiting for the six week period for the s211 to be determined was: *"unacceptable as the Horse Chestnut Tree already presents a hazard to public Safety"*. He went on to state; *"I am following the Guidance that you quote within the 1990 Town and Country Planning Act and will therefore action the removal of this tree due to the fact that this tree presents a risk to human safety"*.

This threat of the tree being removed before the deadline left the Council's no option but to make an emergency TPO and serve it on the tree owner and copied to the Arboricultural Consultant. The Council is justified in the making of the Order if it appears 'expedient in the interests of amenity' to make provision for the preservation of the tree.

At no stage has there ever been any confusion about the fact that tree is in a Conservation Area and not already covered by a TPO.

Conclusion

The Objection has been carefully considered, and it is concluded that none of the points raised in objection justify the removal or withdrawing of the Order.

Local planning authorities can make a TPO if it appears to them to be 'expedient in the interests of amenity' to make provision for the preservation of trees or woodlands in their area', therefore, the imposition of the Order is appropriate.

Any future pruning or removal of the tree can be considered through the TPO planning application process and the Council will consider any sensible tree works application on its merits.

IMPLICATIONS

Policy:

Paragraph 8.46 of the Pendle Local Plan Part 1: Core Strategy states:

'The landscape character of the borough will be protected especially in the open countryside.'

Financial:

None

Legal:

The Council have powers to make a Tree Preservation Order under the Town and Country Planning (Tree Preservation) (England) Regulations 2012.

Section 40 of the Natural Environment and Rural Communities Act 2006 requires local authorities and government departments to have regard to the purposes of conserving biodiversity in a manner that is consistent with the exercise of their normal functions such as policy and decision-making. Conserving biodiversity may include enhancing, restoring or protecting a population or habitat.

Risk Management:

None

Health and Safety:

The trees are in overall healthy condition and do not pose a threat to health and safety over and above the risk any healthy tree poses.

Sustainability:

The trees contribute to sustainability in several ways these include:

- Supporting the biodiversity of the area.
- Remove carbon dioxide and particular matter from the air.
- Uptake large amounts of water from the ground.

Community Safety:**Equality and Diversity:****APPENDICES**

Appendix 1 – Tree Preservation Order

Appendix 2 – Principal Environment Officers TEMPO Assessment

LIST OF BACKGROUND PAPERS

None