

**WYRE FOREST DISTRICT COUNCIL****PLANNING (DEVELOPMENT CONTROL) COMMITTEE****7<sup>TH</sup> MARCH 2006****Tree Preservation Order No. 296 (2005)  
Land to the rear of 99 and 100 Stourbridge Road, Kidderminster**

<b>OPEN</b>	
<b>RESPONSIBLE OFFICER:</b>	<b>Head of Planning, Health and Environment</b>
<b>CONTACT OFFICER:</b>	<b>Clare Eynon – Ext. 2515 Clare.Eynon@wyreforestdc.gov.uk</b>
<b>APPENDICES:</b>	<b>Location Map</b>

**1. PURPOSE OF REPORT**

- 1.1 To determine whether Tree Preservation Order No. 296 (2005), relating to trees at land to the rear of 99 and 100 Stourbridge Road, Kidderminster, should be confirmed or not.

**2. RECOMMENDATION**

- 2.1 **That the Tree Preservation Order, in its current form, be confirmed as the trees contribute to the amenity of the locality and may be under threat of removal.**

**3. BACKGROUND**

- 3.1 The Council approved a planning application (WF/0790/05) for the construction of three dwellings within the rear gardens of 102 - 104 Stourbridge Road, Kidderminster. The dwellings would be accessed off Frank Freeman Court. The approval did not require the removal of any significant trees. However, the adjacent gardens of 99 and 100 Stourbridge Road contain many trees, which provide significant amenity when viewed from Frank Freeman Court and the neighbouring Council managed recreation ground to the north. The trees within these gardens were considered to be under potential threat of removal under the premise of gaining planning permission to build further properties as a continuation of Frank Freeman Close.
- 3.2 The trees are of a variety of ages and include the predominant species of Ash, Willow, Sycamore and Hawthorn. The trees are likely to be self-sown specimens and are not of great individual quality. However the trees collectively form an attractive amenity feature of the locality and are likely to be of value to wildlife.

**4. KEY ISSUES**

- 4.1 The trees provide amenity as an attractive group. The trees are considered to be under potential threat of removal, due to development proposals in the vicinity,

therefore they are considered suitable for continued protection by the Tree Preservation Order.

- 4.2 One objection to the Tree Preservation Order (TPO) has been received from the owner 100 Stourbridge Road.
- 4.3 The objection is summarised below:
  1. The Tree Preservation Order is arbitrary.
  2. The Tree Preservation Order is disproportionate.
  3. The Tree Preservation Order is unfair.
  4. The Tree Preservation Order has been misused.
- 4.4 I will comment on the objector's issues as numbered above.
  - 1. The assertion that the TPO is arbitrary**
- 4.5 The considerations for the serving the TPO were not arbitrary decisions, and despite the information the objector may have received, it was not served as a result of any request from residents of Frank Freeman Court.
- 4.6 The TPO was served in respect of trees within the objector's garden in view of the amenity they provide and as they were considered to be under threat of removal in anticipation of a planning application to develop the land.
- 4.7 Section of 198(1) of the Town and Country Planning Act 1990, allows Local Planning Authorities to 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". Under section 197, a duty is placed on Local Planning Authorities, to consider, whenever it is appropriate, the preservation of trees when granting planning permission. If trees are present on a site and are under public view, as is the case within the objector's garden, if the Local Authority considers that trees may be under threat of removal, in anticipation of an application to develop the land then a TPO may be served.
- 4.8 The TPO was served essentially to prevent removal of amenity trees. There is no reason why a planing application could not be made for development to the rear of the objector's property, despite the TPO. It is acknowledged that trees subject to TPO are in certain circumstances allowed to be removed to necessitate development under planning permission and indeed planning permission overrides a TPO.
- 4.9 It is not normal or customary to name individual Planning Officers regarding requests for the consideration for the creation of TPO, although it is of regular occurrence by virtue of their job in assessment of amenity issues under the Town and Country Planning Act. In my opinion the Local Planning Authority had concern that trees within the objectors garden may have been under threat of removal.
- 4.10 The assertion that the order is arbitrary is therefore not considered to be correct, the processes involved in consideration of the TPO are based on reasoned principals of the legislation and guidance.

## **2. With regard to the assertion that the TPO is disproportionate**

- 4.11 It is accepted that the trees within the garden were not individually inspected and that an 'Area' designation (blanket order) was used to protect the trees. The reason the 'Area' designation was used is to allow protection of the trees as soon as is possible, without alerting the property owner.
- 4.12 Despite my offer to the objector to visit the property and inspect the trees within the rear garden to ascertain the condition and quality of the trees in terms of the TPO, I have received no invitation.
- 4.13 I refute the objector's assertion that the TPO is 'draconian'. In this instance an 'Area' order was entirely appropriate and not in my opinion disproportionate. The Local Planning Authority was unable to enter the site to individually inspect the trees, without alerting the owner and potentially allowing trees to be removed prior to the serving of the TPO. Under the TPO legislation it is only the 'Area' designation, which allows protection in a blanket form. It is however acknowledged that trees potentially unworthy of a TPO may be protected by this process and therefore I offered to re-inspect the trees from within the objector's garden.
- 4.14 The fact that the TPO is provisional for six months, that residents' have the right to object and that the Local Authority must consider those objections prior to confirming or not the TPO, allows consideration of the facts which the Local Authority is potentially unaware of prior to the serving of the TPO. It is accepted that the TPO restricts what the residents' can and cannot do to trees within their gardens. However, a TPO application to undertake works to trees within the gardens can be made and should the applicant be unsatisfied with any decision the Local Authority makes then they have the right of appeal to the First Secretary of State.

## **3. With regard to the assertion that the TPO is unfair**

- 4.15 The TPO does not prevent an application being made to develop the objector's rear garden although trees are considered to be 'material' considerations in any planning application determination. The fact that other adjacent properties have developed their rear gardens is not considered pertinent to this TPO. However, it should be noted that the other rear gardens did not contain significant trees.
- 4.16 With respect to the trees that the Local Authority manages, including those within Springfield Park, it acts in accordance with arboricultural best practice. It must act to reduce the risk of tree failure in a measured and consistent manner to avoid any reasonably preventable injury or damage as a result of its trees.
- 4.17 The neighbouring properties did not have trees of high amenity value within their rear gardens and therefore any comparison with respect to the TPO at the objector's property is not appropriate. It is the objector's assumption that if there were no TPO on trees within his property then he would automatically be able to sell his property for development. This assumption does not take into account other potential planning constraints or the fact the neighbour at 99 Stourbridge Road has many trees within their garden, which might be prejudicial to any potential development in his garden.

## **4. With regard to the assertion that the TPO has been misused**

- 4.18 The TPO was served to prevent the removal of amenity trees.
- 4.19 I would contend that there would be a loss of amenity if trees within the objector's garden were removed and this would have a detrimental impact on the environment of the locality.
- 4.20 It is my understanding that any claims under Article 8 of the Human Rights Act against a TPO have been unsuccessful, in view of the benefit the trees' provide to the community, despite some detriment to the individual.
- 4.21 One letter in support of the TPO has been received from the owner 99 Stourbridge Road.
- 4.22 The letter of support is summarised below:
1. The trees provide a pleasant aspect to the properties.
  2. The trees are important wildlife habitat.
  3. The loss of trees within the public open space to the rear makes these trees more important.
- 4.23 A TPO application has been received to remove a Willow from the rear garden of No. 99 Stourbridge Road (reference 06/0031/TREE) with a recommendation for approval in view of the condition of the said tree.

## **5. FINANCIAL IMPLICATIONS**

- 5.1 There are no financial implications arising directly as a result of this report.

## **6. LEGAL AND POLICY IMPLICATIONS**

- 6.1 There are no legal and policy implications arising directly as a result of this report.

## **7. CONCLUSION**

- 7.1 I therefore consider that the objections and representations have been fully considered and that the Tree Preservation Order should be confirmed without modification

## **8. CONSULTEES**

- 8.1 None

## **9. BACKGROUND PAPERS**

- 9.1 Objection from Mr D C Crichton, 100 Stourbridge Road, Kidderminster (21/10/05)

## 9.2 Tree Preservation Order No. 296 (2005)

PLANNING (DEVELOPMENT CONTROL) COMMITTEE.

TPO 296

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