

**CITY OF LEEDS TREE PRESERVATION ORDER (No.5) 2016,
LAND AT DARTMOUTH PARK, ADJACENT TO PARK AVENUE, MORLEY**

1. BACKGROUND

Following receipt of tree works application, 16/00312/TR by the owner of an adjoining property, several objections from local residents and Ward Councillors were received. Concern was expressed as to future development aspirations on the site and the potential impact on the trees.

The site was subsequently visited to view the proposals and it was evident that the trees in question were prominent. The majority are Park trees located on Council land.

It is ordinarily Council policy not to make its own trees subject to TPO as they are deemed to be under responsible and sympathetic management by the Forestry Department and therefore not at risk. The Conservation Area notification however sought to remove the canopy overhanging the park boundary.

The works were considered to be excessive, detrimental and unnecessary and therefore a Tree Preservation Order ("TPO") was served on 5th February, 2016 and served upon the Council as landowner and copied to the owner of the adjoining property who submitted the tree works application, together with other adjoining properties.

2. OBJECTION

One objection to the TPO was subsequently submitted by Iain Taverndale, an arboricultural consultant, on behalf of the adjoining property owner.

The points raised in the objections can be summarised as follows:

1. Expediency was not met for the making of the Order.
2. Specimens are unreasonably biased over adjacent private land caused by close plantings and lack of historic management and other trees have been topped in the past resulting in the formation of classic defects and structural weakness.
3. Some of the trees are in conflict with a formal stone boundary wall to Dartmouth Park.
4. When considering an objection, authorities should bear in mind that, since they are responsible for making and confirming orders, they are in effect both proposer and judge. They should therefore consider how best to demonstrate that they have made their decisions at this stage in an even handed and open manner. In respect of the Human Rights Act 1998, it provides that public authorities must now act in a manner that is compliant with the terms of the European Convention on Human Rights, article 6 of which provides that a

person's civil rights should be determined by "an independent and impartial tribunal".

3. COMMENTS OF THE TREE OFFICER IN RELATION TO THE OBJECTION

1. The tree works application was deemed excessive. The proposed works would have a detrimental impact on both the amenity of the trees and their long term health. It is understood that the maker had been given prior arboricultural advice on the extent of works deemed acceptable. It is understood, however, that the extent of pruning forming the Notification exceeded the advice given. Even then, the extent of that advice was still considered to be unnecessary and excessive.

It has been brought to the attention of the Tree Officer that following earlier complaints of site clearance at the adjoining property, the property was visited by an enforcement manager, landscape team leader and a tree officer. The Owner advised parties present that he was preparing the land for a residential development application and that Iain Taverndale represented him on arboricultural matters.

Following this site visit, the tree officer contacted Iain Taverndale to discuss a remediation plan to ensure that no further damage was inflicted on both the adjoining site and Parkland trees. During that conversation, it is understood that the constraints of the site were discussed.

Further to his discussion with other Officers, the adjoining has also openly discussed his intention to gain permission to build on this site. It is understood these have yet to be formalised with Planning Officers.

2. The overhang to the adjoining property does not currently present an issue as this is a narrow strip of waste land adjacent to a park. The crown spread of the trees has developed and extended over the boundary for many years. Given the height of the canopy, the trees do not restrict access to the land.

The upright growth form of these trees is typical of boundary trees. The trees form a visual and physical boundary between Dartmouth Park and Park Avenue, providing clear visual amenity to the area.

It has been repeatedly conveyed to the adjoining owner that any sensible and considered tree works applications for arboricultural reasons would ordinarily be supported.

3. The proximity of the trees to the park wall has no bearing on the amenity of the trees. No evidence has been presented of structural issues with the wall. Should such issues become evident, it is worth noting that this is a low boundary wall, and appropriate engineering solutions would be available to ensure retention of the trees whilst addressing the suggested issue. The CAVAT value of the trees would significantly outweigh any minor wall repairs.
4. In respect of even-handed and open decision-making, the Council's Constitution provides for decision-making to be delegated to the Chief Planning Officer, a based on comments from the Tree Officer, a copy of which is sent to the objector for comment prior to the decision being made.

It is considered that this normal practice in decision-making and dealing with objections is fair and even-handed and complies with Article 6 of the European Convention on Human Rights.

4. CONCLUSION

The Order is warranted on the grounds of amenity and expediency and, therefore, the imposition of the Order is appropriate.

The Council would consider any sensible tree works application on its merits.

Any future development related tree issues can be considered through the Planning process, where trees will be one of many considerations

5. RECOMMENDATION

That the Order be confirmed as originally as served.