

**CITY OF LEEDS TREE PRESERVATION ORDER (NO.6) 2016
(87 LITTLEMOOR ROAD, PUDSEY, LEEDS LS28 8AW)**

1. BACKGROUND

In 2014 the Landscape Team was asked to consider the possibility of making a TPO at the above property, following the receipt of complaints from a local resident to the Director of City Development and a local M.P.

A site visit was undertaken by a Tree Officer and it was concluded that the trees did make a significant contribution to the amenity of the area and were generally healthy. Therefore, a Tree Preservation Order was considered appropriate. Given the number of trees and the nature of the cover, and the limited time and resources available, an Area Order was made (TPO 30 2014).

The landowners objected to this Order but this objection was overruled and the Order confirmed as originally served. Consequently, the landowners referred the matter to the Local Government Ombudsman. The Ombudsman considered the matter and concluded that the Council had been at fault in not carrying out a proper assessment before confirming the Order or after the specific complaint. The following course of action was recommended to put matters right;

'That the Council within one month carries out a full and thorough assessment of the trees and makes a proper record of the trees it wants to protect. If the inspection shows all the trees did not provide a public amenity, it will modify or revoke the Order. It can then issue a TPO that protects only the trees or groups of trees that do provide a public amenity'.

The Council agreed to this course of action and so the complaint was closed.

The trees were therefore re-inspected in February 2016 by a Tree Officer and an amenity assessment completed, in line with Planning Practice Guidance on Tree Preservation Orders published by the Department for Communities and Local Government in 2014.

This Guidance provides that before making an Order a local planning authority officer should visit the site of the tree or trees in question and consider whether or not an Order is justified. Where a Tree Preservation Order is considered justified, the officer should gather sufficient information to enable an accurate Order to be drawn up. This record should include the number, species and accurate location of trees to be included in the Order, together with other information that may be essential or helpful in the future.

Further to this inspection and related amenity assessment, an instruction was sent to Legal Services and a new Order was made (TPO 6/2016) on 17 March 2016, which identified specific individual and groups of trees considered to possess sufficient amenity value to merit protection. The 2014 Area Order was simultaneously revoked.

2. OBJECTION TO THE NEW ORDER

The landowners objected to the Order by e-mail, accompanied by two attachments; a Tree Safety and Tree Condition Arboricultural Report and a list of signatures of neighbours from Cooper Hill and Littlemoor Road in support of the objection.

The grounds objection may be summarised as follows.

1. The making of a new TPO to correct maladministration is not justified. The Council does not have reasonable grounds to re-assess and make a new TPO in circumstances where an initial TPO was wrongly and unjustifiably placed.
2. The Council missed the opportunity to protect the tree issues in approving the permitted development. The landowners submitted a drawing and marked the trees to be removed to the Council. No objections or concerns were raised which led the owners to believe that they were permitted to remove the trees and they should not now be punished through the making of a TPO.
3. The “permitted development” works were permitted with the “prior approval” under the 2014 government guidelines and so the making of new TPO is unjust given that the “permitted development” works was permitted with the “prior approval” of the Council under these guidelines.
4. A total of eight residents in the vicinity have signed a petition under a statement indicating that the works carried out so far at the property including the removal of three trees have not destroyed amenity value and that the work of making good the property is supported.
5. The arboricultural consultant report submitted with the objection recommends that the decision whether to contest the new order is considered carefully and that the decision whether to object lies with the owner. The consultant states that she would be available inspect the other protected trees to determine their condition and any grounds upon which to refute the order under a separate instruction.

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

1. The Ombudsman concluded that the Council had been at fault when serving and administering the original Area Order. A course of action was proposed to put matters right, as detailed above. The Council agreed to this and implemented it. It is accepted that the original Order was incorrectly progressed, and as such, it has been revoked and in line with the decision of the Ombudsman. A new Order has been made following a re-survey of the trees on site.

It is considered that the Council has followed procedure correctly in the case of TPO 6/2016 and has acted in accordance with the decision of the Ombudsman. This decision expressly envisages the making of a new Order by the Council. The Ombudsman makes clear that the trees should be thoroughly re-inspected and that the original Order could be revoked and

potentially be replaced with a new Order, protecting only the trees or groups of trees that provide public amenity. Therefore it is neither unreasonable nor unjustifiable for the Council to make a new Order.

2. The original Area Order has been revoked and the new Order made based solely on the specific merits of the trees. The making of the new Order followed the process set out in the decision of the Ombudsman. There is no intention to punish the owners through the making of the new Order.

Whilst it may have been beneficial by the landowners for the issue of the trees to have been considered as part of consideration of the permitted development proposals, the fact that the Council did not raise any tree related issues in assessing the permitted development proposals or during subsequent works does not preclude the making of an Order. An Order can be made at any point if there are concerns that trees may be under threat.

3. The Council is not prevented in law from subsequently taking action to protect trees where it is considered expedient to do so due to their amenity value. It does not, therefore, consider that the making of the new Order is unjust or unlawful.

The Town And Country Planning (Tree Preservation) (England) Regulations 2012 provide a list of exceptions to the requirement of obtaining consent for such works to a protected tree, which are set out at Regulation 14. These provide that the Authority's consent is not required for carrying out work on trees subject to an Order so far as work is necessary to implement a full planning permission (which is still extant). However, Regulation 14 clearly states that the same does not apply to outline planning permissions or permission granted by or under Permitted Development.

Therefore, there is nothing provided within the Regulations that allows Permitted Development rights to override the requirement to obtain consent from the Authority to carry out works to a tree protected under an Order. This is also reiterated in guidance, which states that the Authority's consent is also required for work on trees protected by an Order that is necessary to implement permitted development rights.

Whilst in this case, no Order was in existence at the time the landowners notified the Authority of proposed works under Permitted Development, this does not amount to the granting of planning permission by the Authority.

Therefore, the lack of concern raised by the Council in relation to trees following receipt of the notification of the proposed works under permitted development does not subsequently prevent the Council from making an Order. There is nothing in law to prevent the Council from subsequently making an Order, as is the case here, based on legitimate concerns as to the protection of the trees.

4. The list of signatures includes several neighbours from Cooper Hill and a resident of Littlemoor Road. The question asked in the heading appears to

relate to trees that have already been removed, rather than the trees to be protected the Order. In any event, it is necessary for the Council to take a long-term view of the amenity value of the trees to the wider area, notwithstanding that the current owners of neighbouring properties may not consider that their amenity has been adversely affected.

5. It should be pointed out that Paragraph 8.3 of the Tree Consultant Report submitted with the objection advises that a formal Planning Application be made to include the elements that would allow completion of the works.

This Report refers only to a Horse Chestnut Tree comprised in one of the two groups to be protected and does not assess any of the other trees covered by the Order. It does not support the removal of this tree, concluding that “there is not enough evidence to substantiate the removal of this tree from the TPO”

The Report also provides an analysis of the issues around the original Area TPO. Whilst much of this is agreed, that Order and the procedure surrounding it has been dealt with by the Ombudsman and the original Order revoked. As such the content has little relevance to the current objection.

It should also be noted that the consultant goes on to say in the report, that if no further works are proposed “I would be minded to advise simply accepting the Order”.

4. CONCLUSION

The grounds of objection have been carefully considered.

The Order was made following the decision of the Ombudsman that there had been maladministration by the Council. The steps outlined in the decision to put matters right were accepted and implemented. The Council is confident procedure has been followed.

The fact that the original Order was found wanting does not preclude the making of another Order.

The arboricultural report submitted with the objection does not support the removal of any trees from the Order.

On balance it is considered that the service of the Order was appropriate and justified and that it should, therefore, be confirmed.

5. RECOMMENDATION

That the Order be confirmed as originally served.