

P & EP Committee: 16th August 2023

ITEM NO 1

PROPOSAL: Confirmation of Tree Preservation Order 23/00003/TPO

SITE: 99 & 101 Fulbridge Road, Peterborough

REFERRED BY: Head of Planning

CASE OFFICER: Stephen Chesney-Beales

TELEPHONE: 01733 453465

E-MAIL: stephen.chesney-beales@peterborough.gov.uk

RECOMMENDATION: Confirm – Tree Preservation Order 23/00003/TPO

1 DESCRIPTION OF THE SITE AND SURROUNDINGS & SUMMARY OF THE PROPOSALS

Purpose of Report

A provisional Tree Preservation Order 23/00003/TPO (TPO) at 99 & 101 Fulbridge Road, Peterborough was made and served on 16th March 2023 as a consequence of an outline planning application to build a single storey dwelling in the rear garden of 5 Sheridan Road, Peterborough.

The TPO has been the subject of consultation and because objections have been received, the Committee are required to consider the objection, before determining the confirmation of the TPO, in accordance with para 2.6.2.2 (f) of the Council's constitution.

The main considerations are:

1. Are the trees subject of the TPO worthy of inclusion in a TPO in terms of their public visual amenity value?
2. Is the making of the TPO reasonable and justified having regard to the objections raised?

The Head of Planning recommends that the TPO is CONFIRMED with modifications to show the position of the individual trees within the groups G.1 & G.2 to avoid doubt in the future.

Site and Surroundings

The properties of 99 & 101 Fulbridge Road both have rear gardens with boundaries that abut the rear garden of 5 Sheridan Road. All the properties are residential in nature and have large, long gardens of the type typical of the age and character of the properties of the time.

Description of Tree/s

The trees subject of the TPO are all Lombardy Poplar and are within two groups. Group G.1 consists of three trees and G.2 two trees. The trees were described by an independent Arboriculturalist in July 2022 as trees which '*offer a further 20 to 40 years contribution, with good screening and wildlife habitat potential, and are of benefit to the local landscape*'.

Please see Appendix 1 for a copy of the TPO and plan to be modified.

2 PLANNING HISTORY

Relevant Planning History

An outline planning application, 22/01542/OUT for the construction of a single storey dwelling in the rear garden of 5 Sheridan Road was received from the Objectors - Mr & Mrs Clark on 25th October 2022.

The application was Refused on 24th March 2023.

3 PLANNING POLICY

Decisions must be taken in accordance with the development plan policies below, unless material considerations indicate otherwise:

· Town and Country Planning Act 1990, Section 198 states

198.- Power to make tree preservation orders

(1) If it appears to a local planning authority that **it is expedient in the interests of amenity** to make provision for the preservation of trees or woodlands in their area, they may for that purpose make an order with respect to such trees, groups of trees or woodlands as may be specified in the order.

· The Town and Country Planning (Tree Preservation) (England) Regulations 2012

4 CONSULTATIONS/REPRESENTATIONS

Objections

Two objections have been received with regards to the making of the above TPO - one, from Mr & Mrs Clark of 5 Sheridan Road, the second, from Sarah Raucci of 101 Fulbridge Road.

Mr & Mrs Clark's TPO Objection Notice is dated 31st March 2023 and consists of 11 pages, please see Appendix 2

Mr & Mrs Clark raised a number of objections to the making of the TPO and included many references to the refused outline planning application above, Tree Officer responded initially by letter dated 19th April 2023, please see Appendix 3. The Tree Officer clearly stated he would only respond to the points raised in the TPO Objection Notice but would not respond to matters relating to the refused outline planning application.

The main points of Mr & Mrs Clark's objections are outlined below, please note the Point No's below, with reference to the page numbers of the TPO Objection Notice.

Point 1, page 1. – 'Protecting trees & Planning: Note, *The Lombardy Trees are not at risk of removal.*'

The Council made the TPO, as it considered the trees' may be under threat from development and mis-management affecting their future health and wellbeing. It was considered that the proposed development had created pressures to carry out inappropriate and unnecessary pruning or felling, because of the anxiety and apprehension of future occupiers of the proposed dwelling with regard to the close proximity of the very tall Lombardy Poplars.

Current Government guidance states - It may be expedient to make an Order if the authority believes there is a risk of trees being felled, pruned or damaged in ways which would have a significant impact on the amenity of the area

Point 2, page 1 - 'Amenity Value: PCC have not fully assessed the amenity value of the trees concerned, prior to actioning a tree preservation order: PCC have not followed the procedural requirements of the Regulations:'.

PCC use an assessment criteria, detailed within section 5 below, which considers the following:

Visual Amenity and Visual Impact as a Group

Tree Health Considerations

Impact Considerations

The application of this assessment criteria demonstrates that the Council have adequately followed procedural requirements.

Point 3, page 2 - '*Section: 201 Direction – As this TPO has been enforced with immediate effect, PCC have failed to note a 201 direction on the notice letter 16th March 2023: 23/00003/TPO, PCC have not followed the procedural requirements of the Regulations:'.*

The making of current TPO's are subject to legislation which came into force on 6th April 2012, as discussed in the leaflet Protected trees - A guide to tree preservation procedures, sent with every new copy of a TPO. The changes made in 2012 repealed Section 201 from the legislation, therefore, all TPO's take immediate effect and are provisional for six months, in which time they can be confirmed or allowed to lapse after six months.

Point 4, page 2 – '*Note: A Lombardy Poplar tree, is said to be mature at around 50 years old, all these Lombardy poplar trees at 99 & 101 Fulbridge Road, are 45+ years old. When these trees are approaching the end of their natural lifespan and unlike other species are 'especially prone to breakage'. These tree species are known even with specialist checks are not highlighting internal issues which can cause the tree to fail. These trees are near end of life and present a danger to life and property. Peterborough city council have not issued a report, visual, nor internal testing to determine decayed or diseased prior to notice of a TPO. Peterborough city council, do have a duty of care to residents, and we will hold them fully accountable if defects worsen in any way at any time in the future. We will seek redress through courts in order to recover repair costs and case management costs. Although we do not own these trees; under 'Section 1 (3) of the occupier liability act 1984, which states that duty is owed when the occupier is aware of the danger, or has reasonable grounds to believe it exists, knows of has reasonable grounds to believe that the trespasser is near or may come to be near danger and the risk is one which the occupier may reasonably be expected to protect visitors from:'.*

The Tree Officer does not consider the trees to be fully mature or over mature and does not consider the trees to be in an unsafe condition. The Council does not have an obligation to carry out any health and safety inspection of trees or issue a report prior to making a TPO, nor does it have responsibility for the ongoing health and safety inspections of private trees subject of a TPO.

Trees the subject of a TPO remain the responsibility of the landowner, as does any obligation under the Occupiers' Liability Act 1984 (OLA). The health and safety of the trees in question, remain the responsibility of the landowners at 99 & 101 Fulbridge Road, as they always have done. The only difference now is landowners must seek permission from the Council before carrying out any future tree works. There is no cost to apply to carry out tree works and the Council will never knowingly refuse health and safety works where justification is proven.

Point 5, page 3 - '*N.B. Expediency All reports note retention of Lombardy trees, topping was suggested only in the first arboricultural report, then removed on 3 additional reports. Again, Topping is common practice, in the risk areas i.e. residential for safety and age of tree and species type. - Ref Reading council & Welwyn Hatfield Borough council, and also future note: TPO is being made on grounds of*

Amenity Value: even suggested Topping heights, would still allow for visual amenity (surrounding bungalows and houses) i.e. suggested cutting from 24 meters to 12 meters would still be very visual above all surrounding dwelling type). PCC have note followed the procedural requirements of the Regulations’.

‘Technical grounds: We have had reports from a independent arboriculturist noting in regards to the Lombardy poplar trees: noting dead, dangerous branches, indicating non maintenance, and suggestion to topping these to a safer height, and allowing to re-grow; addressing residential area, safety and concerns...’

The Tree Officer does not consider the ‘topping’ of the trees to be necessary or appropriate currently, therefore, such works are considered to be contrary to good, modern arboricultural practices. However, there may be a need to reduce the trees in height in the future, should their condition decline. The trees in question have numerous dead branches throughout the crowns, typical of the species and age of the trees. The removal of this deadwood is an exempt item from the requirement to seek permission from the Local Planning Authority and thus could be removed with immediate effect by the owner.

The Tree Officer is not aware of any independent arboricultural report, stating the trees subject of the TPO have ‘dangerous branches’. The report from Mr & Mrs Clark’s independent Arboriculturist - Caroline Hall states the trees - ‘offer a further 20 to 40 years contribution, with good screening and wildlife habitat potential, and are of benefit to the local landscape’ and considers the trees to have ‘considerable stature’ and are ‘widely visible from the surrounding area’.

Point 6, page 3 - ‘Note: discussions between all parties boarding garden boundaries of the Lombardy poplars, have not been assessed or considered, example: we have on numerous times tried to enter into good communications with PCC in regard to these trees, but have unfortunately been ignored, we have requested site visits re: trees on and off site including the Lombardy poplars on 101 & 99 Fulbridge Road, but have been ignored. Copies are attached of written requests, same goes for verbal communications’.

The Tree Officer has not been approached by ‘all parties’ ‘on numerous times’ with regards to these trees and the making of the TPO. The only direct communication from Mr Clark with regard to the above planning application was in relation to an e-mail dated 2nd December 2022, which the Tree Officer had not responded to, but had discussed with the Planning Case Officer. The Tree Officer apologised to Mr & Mrs Clark for this oversight in his letter dated 19th April 2023.

The Tree Officer has responded to all formal consultations with regards to the above planning application and discussed the issues with the Planning Case Officer, explaining that his comments would remain the same given the obvious constraints.

Point 7, page 4 – ‘We have advised neighbours and PCC in writing of this risk and further note in this document, that these trees represent a risk. As a result, to date, PCC - have conducted a visit at 101 Fulbridge Road, noted lots of dead wood ‘confirming non maintenance’ not issued a report stating these are safe, but instead issuing a tree preservation order, making maintenance work, ‘apply for’, and adding extra costs. This will prevent future tree management due to costs and process’.

The Tree Officer visited 101 Fulbridge Road and met with one of the owners and made a visual assessment of the trees, subject of the TPO. He did remark on the very obvious dead branch wood within the trees, common for trees of this species and age. He did not make any mention of ‘confirming non maintenance’.

The Tree Officer does not agree that the making of a TPO effects the management or future maintenance of trees, especially when considering the obligations of landowners under the OLA, as discussed in Point 4 above.

Point 8, pages 8 & 9 – ‘We have also attached a survey of views of the neighbours’ (please see Appendix 4) covering there opinions on height, dangerous, Tree preservation orders, and amenity. This

concurs with the consensus locally and backs the appeal that a tree preservation order on these Lombardy poplars is unjust and not necessary. It also backs the original arboricultural implications assessment; planners concerns and local community about the size and dangers these do present in a housing setting'.

The Tree Officer acknowledged the above survey with regards to the views of Mr & Mrs Clark and their neighbours. The Tree Officer responded to Mr & Mrs Clark stating he believes the TPO is justified owing to the trees having significant public amenity value. Within their current rear garden settings, in a residential area it is considered that the risk posed by the trees can be suitably managed by the resident in the form of routine inspections by a competent person and undertaking works where required.

The Tree Officer also wrote to each of the neighbours, 16No. in total, requesting that they respond in writing within 14 days of receipt of the letter, letting the Council know if they wish to object to the making of the TPO, stating the reasons for objecting. The Council did not receive any responses.

Please see a copy of the survey (see Appendix 4) and a copy of the standard letter delivered to each of the neighbours on 19th April 2023 (see Appendix 5).

Point 9, pages 5, 6 & 10 - 'Leading to our other statement 'and in reactive response to our challenging of the conduct of the tree officer during this planning application'. We genuinely feel this TPO has been put in, due to challenging the tree officer on why he disagrees with a professional arboriculturalist report on the condition of the trees on the site. We don't have an issue with varying options, but to disagree with a professional report on trees on site, not providing any other independent arboricultural report in argument... nor visiting site to view the trees in person... is unprofessional and not something that would be expected from someone carrying out their duties correctly'.

'We feel strongly that the tree officer, is abusing his power to invoke a Tree protection order, and not in the ethos and power of regulation 6 of the town and planning (tree preservation) England regulation 2012) on these Lombardy Poplar trees off site without real justification. In all reports the Lombardy trees of site were for retention'.

'We also feel an abuse of power and misconduct from the tree officer from Peterborough City Council'.

The Tree Officer is not aware of any 'challenge' to his conduct in dealing with the above application. The TPO has been made and considered as discussed in the above points. The Tree Officer has made his comments in relation to the planning application in good faith having viewed the site on several occasions adequately from the neighbouring land, with the information available to him and provided by Mr & Mrs Clark's appointed Arboriculturalist. The Tree Officer does not consider this approach to be 'unprofessional' given all the trees in question and the proposals can be judged from view points surrounding the site, together with the information available.

The Tree Officer does not consider he is 'abusing his powers' or that he has by undertaking the duties and responsibilities of his post, in considering the protection of trees within Peterborough City Council's district, as the appointed Tree Officer.

The Tree Officer would point out that all the Planning Application's listed - 10/00358/OUT, 11/00719/OUT, 21/01574/OUT & 22/01542/OUT have all been refused by the Council.

Please note the Additional Information 18 July 2023 from Mr & Mr Clark and the Tree Officer's response, including the letter from Mr Ray Palmer.

Also, please note the Additional Information 18 July 2023 for comments raised by Ward Cllr Asim Mahmood, responded to by the Tree Officer.

Sarah Raucci's TPO objection letter is dated 3rd April 2023 and consists of 4No pages, please see Appendix 6 (two of the pages are a copy of the survey of neighbours discussed in Point 8 above, see Appendix 4).

Sarah Raucci raised a number of objections to the making of the TPO, the Tree Officer responded dated 19th April 2023, please see Appendix 7.

The main points of Sarah Raucci's objections in brief are outlined below, please note the Point No's below, all the Points are on page 1 of the objection letter.

Point 10. - *'I do not wish these trees to be felled or destroyed at all. My objection rises from the factors that have led to this decision'... 'We have no objection to the planning application but do regard the trees to be important enough to be considered and reduced in height to maintain safety and the health of the trees'.*

The Tree Officer notes the sentiment from Sarah Raucci regarding the trees, however, he considers the trees not to pose an unacceptable risk yet would encourage the dead branches being removed within the crowns. Although very tall he does not consider it necessary or appropriate currently for the trees to be 'reduced in height', and considers such works are considered to be contrary to good, modern arboricultural practices and will not maintain the trees' health necessarily.

However, there may be a need to reduce the trees in height in the future, should their condition decline, just because a tree is tall, does not make it unsafe or dangerous.

Point 11. - *'I do not believe that the trees bring significant amenity benefit to the local area' ... The public amenity is low.*

The Tree Officer considers the trees subject of the TPO bring significant visual amenity value to the local area and are clearly visible by the public from publicly accessible viewing points, including from parts of Fulbridge Road, Sheridan Road and from further afield.

Point 12. - *'Please see the attached survey of local residents. The most common factor stated in the survey is that the trees are situated in an inappropriate location'.*

The Tree Officer acknowledged the above survey with regards to the views of Sarah Raucci and her neighbours, in his letter of 19th April 2023. The Tree Officer considers the trees to be acceptable and suitable in their rear garden settings, in a residential area, with large gardens. Please see point 8 above with regards to the survey and the response the Council received.

Point 13. - *'The protection of the trees can prove to be important, but I believe that these trees are not under considerable threat'.*

As in Point 5 above - The Tree Officer considers the trees may be under threat from development and mis-management Please see the Government guidance in Point 1. above. Please note Mr & Mrs Clark's independent Arboriculturalist - Caroline Hall states the trees - 'offer a further 20 to 40 years contribution, with good screening and wildlife habitat potential, and are of benefit to the local landscape' and considers the trees to have 'considerable stature' and are 'widely visible from the surrounding area'.

Point 14. - *'Residents at 5 Sheridan Road have clearly compromised with their planning application and the consideration of the trees. They are happy, as part of their application to reduce the tree height to a more manageable height of say, 15 meters. This is turn would be an appropriate height for the trees to begin regrowth (as they are fast growing trees) and maintain the health of them and furthermore their longevity. This procedure would support ourselves in maintaining the trees at a more manageable height'.*

As in Point 5 above - The Tree Officer does not consider reducing the trees in height to be necessary or appropriate currently, therefore, such works are considered to be contrary to good, modern arboricultural practices and will not maintain the trees' health necessarily.

Point 15. – *‘Lombardy poplar trees have a general life span of 30-50 years and as I have lived at the above property for 30 years; and the trees were established then, they are more likely at the end of their life span’.*

As in Point 4 above - The Tree Officer does not consider the trees to ‘have a general life span of 30-50 years’ or that they are ‘at the end of their life span’. He does not consider the trees to be fully mature or over mature.

Point 16. – *‘This in turn does not mean that they should be of any less value but I am aware that the trees could potentially begin to fail and the financial burden on myself and my husband to require tree surgeons and appropriate professional evidence or arboricultural consultants could be immense with having to apply all this within the set ‘rules’ of a TPO and my once calming trees are causing me some moderate stress and anxiety and ruining the peaceful enjoyment of my property’.*

The Tree Officer acknowledges that trees can fail unpredictably, however, as a landowner responsible for trees growing on their property, there is an accepted obligation under the Occupiers’ Liability Act 1984 (see Point 4 above) with an obvious cost attached in managing and ‘maintaining’ trees whether protected by a TPO or not. The Tree Officer does not agree that the cost is increased immensely because the trees have been protected by a TPO, as there is no fee for a tree work application.

Please note, additional information has been submitted by Sarah Raucci, see Appendix 6a for details.

The Tree Officer offers the following response to the new, relevant points raised.

The removal of dead and dangerous branches from a tree protected by a TPO, can be done easily by giving the Council five days notice via e-mail or if the matter is considered urgent and an immediate risk of serious harm, written notice is required as soon as practicable after the work becomes necessary. In both cases, evidence will normally be required/requested, to support/demonstrate the nature of the ‘immediate risk of serious harm’ by way of specialist reports and/or photographic evidence.

The Tree Officer does not agree that a TPO will increase any risks or safety issues, as any truly dangerous tree related issues can be carried out quickly, as stated above.

The TPO process, including undertaking site visits and assessments are common practice. The Tree Officer was greeted and given access to the gated rear garden and the trees in question in this case and the proposed TPO was discussed at the time, there was no objection to a TPO being made by Sarah Raucci on the understanding that none of the other trees in the garden were included. The Council does not undertake any prior consultation before making a TPO, as often trees proposed for protection are felled before a TPO can be made and served.

5 ASSESSMENT OF THE PLANNING ISSUES

Assessment of Trees

Local Authorities are guided by Government guidance at: <https://www.gov.uk/guidance/tree-preservation-orders-and-trees-in-conservation-areas#making-tree-preservation-orders>

At PCC an assessment criteria has been developed and covers the considerations in Point 2 above and detailed below:

Visual Amenity and Visual Impact as a Group

Government advice states - The extent to which the trees or woodlands can be seen by the public will inform the authority’s assessment of whether the impact on the local environment is significant. The trees, or at least part of them, should normally be visible from a public place, such as a road or footpath, or accessible by the public.

The Tree Officer considers the trees subject of the TPO are clearly visible by the public from publicly accessible viewing points, including from parts of Fulbridge Road, Sheridan Road and Tennyson Road and therefore, display significant visual amenity value and visual impact as a group.

Tree Health Considerations

Tree health considerations include visual health, structure, growth, foliage condition, size, past management, future maintenance, future visual impact, maturity, life expectancy and presence of fungi.

The Tree Officer considered the trees subject of the TPO to be of an average health and condition with regards to the above attributes for their age as early mature specimens with less than 40 years life expectancy and with no obvious signs of fungi present, at the time of assessment.

Impact Considerations

Impact considerations on the public Highway, services, on walls or buildings.

The Tree Officer considered all of the above considerations to be low, at the present time.

TPO Serving Procedure

TPO 23/00003/TPO was served as a result of receiving the above planning application 22/ 01542/OUT to build a single storey dwelling in the rear garden of 5 Sheridan Road, Peterborough. A TPO was considered appropriate and reasonable in the circumstances given that trees may be under threat from development and mis-management affecting their future health and wellbeing.

A TPO Assessment was carried using the PCC criteria on the trees the subject of the TPO and the TPO made accordingly.

Mr & Mrs Clark and Sarah Raucci's objections have been considered and responded to above.

6 CONCLUSIONS

The trees subject of the TPO, shown in Appendix 1, are considered to offer significant, public visual amenity value and are clearly visible by the public from publicly accessible viewing points, including from parts of Fulbridge Road, Sheridan Road and Tennyson Road. The trees meet PCC's TPO Assessment criteria, and are considered under threat from the proposed development, therefore, the making of the TPO was considered appropriate and reasonable in the circumstances. In order to safeguard the visual amenity value of the trees and their contribution to the wider landscape, it is recommended the TPO is confirmed with modifications.

8 RECOMMENDATION

The Head of Planning recommends that the TPO is CONFIRMED with modifications to show the position of the individual trees within the groups G.1 & G.2 to avoid doubt in the future. Please see Appendix 1, for details.

Copy to Councillors: