

P & EP Committee: 9th April 2024

PROPOSAL: Confirmation of Tree Preservation Order 23/00009/TPO

SITE: 7a Maffit Road, Ailsworth, Peterborough, PE5 7AG

REFERRED BY: Head of Planning

CASE OFFICER: Stephen Chesney-Beales - Tree Officer

TELEPHONE: 01733 453465

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

RECOMMENDATION: Confirmation of Tree Preservation Order 23/00009/TPO without modifications.

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

Purpose of Report

The Tree Preservation Order (TPO) - 23/00009/TPO 7a Maffit Road, Ailsworth, Peterborough was made and served on 22nd November 2024 to protect one individual tree - T.1 Box Elder, because the tree was considered to be under threat by way of a Section 211 Notice to fell the tree.

The TPO has been the subject of consultation and because objections have been received, the Committee are required to consider the objections, 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. The Box Elder, the subject of the TPO is worthy of a TPO in terms of its 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 without modifications.

Site and Surroundings

The tree is located within the front garden of No.7a Maffit Road, Ailsworth, immediately adjacent to the front boundary of the property with Maffit Road.

Please see the TPO plan within **Appendix 1**, for reference.

Brief description of the tree

The Box Elder T.1 is considered to be an early mature specimen, typical of the species and appears to be in a good physiological and structural condition with no apparent health problems or structural defects.

Please see the photographs in **Appendix 2**, for reference.

2. PLANNING HISTORY

Current Relevant Planning History

A Section 211 Notice reference 23/01416/CTR was received by the Council on 16th October 2023, giving the Council six weeks notice of the felling of the Box Elder, growing within the Ailsworth Conservation Area.

Please see a copy of the S.211 application in **Appendix 3**, for reference.

Consultation response - Ailsworth Parish Council (APC)

Please can the Tree Officer provide some advice or information to the Parish Council about the felling of the Box Elder tree 23/01416/CTR as to the reasons why this could not just be trimmed, as previously mentioned? Also, what is the expected life span of these normally to see what is being taken away from felling rather than trimming/reducing? The Parish Council would like to think this has been considered in making the decision.

The Council's Tree Officer considered the above response and made the following comments to the Parish Council.

I am not happy to see the tree removed and if a compromise cannot be reached on retaining the tree and pruning it to resolve the light issue in part, I will make a recommendation to protect the tree with a tree preservation order (TPO). If the Parish Council are in support of putting a TPO on the tree, given the circumstances, please let me know.

Ailsworth Parish Council - response

The Parish Council agreed at their meeting last night that they support your view as Tree Officer that as a principle they would prefer not to see the tree removed as it seems unnecessary - they support appropriate pruning and maintenance instead and if this cannot be agreed, would support tree protection.

Please see copies of APC's responses in **Appendix 4**, for reference.

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:

S.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 - 1

A letter raising a number of objections with regard to the making of the TPO was received dated 19th December 2023, within the objection period, from Mr Bailey the notifier and joint owner of the property. The letter was responded to via e-mail by the Tree Officer on 21st December 2023.

Please see **Appendix 5**, for reference.

The Council's Tree Officer considered the objections in the above letter, which are set out below in italics.

The Tree Officer's response to each point is in bold below.

a) *The tree is a box elder and is not native to the UK*

Any tree species can be protected by a tree preservation order (TPO), being a native species has no major significance, as the trees amenity value is the major consideration.

b) *Historically someone has poorly pruned the tree which has made it a bit of an eyesore.*

The tree does not appear to be an 'eyesore' but is considered to offer public visual amenity value to the immediate and wider area and contributes to the character and appearance of the Ailsworth Conservation Area.

c) *The tree is poorly positioned. It is too close to my house and the road meaning debris is constantly being dropped in my guttering and on the road.*

The tree appears to be positioned much the same as one of the adjacent Silver Birch, and in a suitable position in the front garden adjacent to the Maffit Road.

d) *The tree is interfering with the telephone lines.*

The branches of the tree interfering with the telephone lines can be pruned, sympathetically to reduce the contact with the lines in question, by way of a TPO Tree Work Notice/Application.

e) *The tree is interfering with the lamppost.*

The branches of the tree interfering with the lamppost or blocking the lamppost can be pruned, sympathetically to reduce the contact with lamppost, by way of a TPO Tree Work Notice/Application.

f) *The tree is blocking light to my neighbours houses one of whom has raised the issue.*

The tree can be sympathetically pruned, subject to good arboricultural practices, to address in part the issue of light to the neighbouring property, by way of a TPO Tree Work Application.

g) *Due to its positioning the tree is constantly being hit by delivery vans / trucks.*

The branches of the tree being hit by delivery vans/trucks can be pruned, subject to good arboricultural practices, by way of a TPO Tree Work Notice/Application. It should also be noted that tree works to provide a 5.5m clearance, of the adjacent highway, is exempt from the need to seek approval via a tree works application.

h) *The tree is depositing debris in my neighbour's garden and guttering.*

It is unfortunate that debris is falling into your neighbour's garden and gutters, however, this happens with all trees close to property boundaries and is a normal situation with regard to most trees in such circumstances. With regards to gutters being affected, gutter guards are widely available to reduce debris getting into gutters.

i) *I have spoken to my immediate neighbours who are all in support of felling the tree.*

Your comment is noted. Peterborough City Council and Ailsworth Parish Council (APC) support the retention of the Box Elder.

j) *If the tree were to fall it would damage either my house or my neighbour's house. It overhangs an original roman wall owned by my neighbour.*

As the owner of trees you have a 'Duty of Care' under the Occupiers Liability Act to ensure your trees are in a safe condition. There did not appear to be any evidence to suggest the tree was in an unsafe or dangerous condition, when assessed, giving rise to any concerns that the tree or significant branches may fail or fall. The council would reassess this situation if evidence was presented in the future which demonstrated a proven risk.

k) *Felling the tree will enable the two silver birch trees to flourish as the box elder is blocking light getting to them.*

The Silver Birch in question are not considered to offer the same public visual amenity value, as stated above, and are of a poor quality.

l) *We have previously been given permission to fell the tree. Nothing has changed between today and when the permission was previously granted apart from the Tree Protection Officer.*

A Notice/Application was made in 2013 to fell both the Silver Birch and two Box Elder.

In the last ten years the situation has changed significantly, in as far as, one of the Box Elders has been removed, freeing up space around the remaining Box Elder and the two Silver Birch. It would appear the Birch have declined whereas, the Box Elder has become a prominent feature on this section of Maffit Road, contributing to the public visual amenity value of the immediate and wider area and contributes to the

character and appearance of the Ailsworth Conservation Area. For this reason the Parish Council did not wish to see the Box Elder removed and supported its further protection with a TPO.

Objections - 2

A letter raising a number of objections from 1 to 6 with regard to the making of the TPO was received dated 19th December 2023, within the objection period, from Dr Baugh from 5 Maffit Road a neighbouring property. The letter was responded to via e-mail by the Tree Officer on 21st December 2023.

Please see **Appendix 6**, for reference.

The Council's Tree Officer considered the objections in the above letter, which are set out below in italics.

The Tree Officer's response to each point is in bold below.

1. The Box Elder is a very large, overgrown tree and leaning badly towards the road and appears to be a dangerous risk in terms the potential to fall onto the road and significantly damage the opposite property.

The Box Elder is not considered to be 'very large, overgrown and leaning badly'. When assessed the tree was not considered to be in an unsafe or dangerous condition. There was no evidence, giving rise to any concerns that the tree or significant branches may fail or fall onto the road or adjacent properties. The owner of the tree has a 'Duty of Care' under the Occupiers Liability Act to ensure the tree is in a safe condition.

2. The tree is impinging on various telephone wires that cross the road and is in danger of bringing these down.

The branches of the tree interfering with the telephone wires can be pruned, sympathetically to reduce the contact with the wires in question, by way of making a TPO Tree Work Notice/Application accordingly.

3. The tree in question is non-native and therefore not a priority for preservation.

Any tree species can be protected by a Tree Preservation Order (TPO), being a native species has no major significance, as the tree's amenity value is the major consideration.

4. In a conservation area the owner of such trees would in any case need formal permission to fell or prune such a tree and hence we see no need for a formal TPO to be made in this case.

A tree owner in a conservation area does not 'need formal permission to fell or prune such a tree' but is obligated by the Town & Country Planning Act to give Peterborough City Council (PCC) six weeks notice in writing before carrying out such works. This was done in respect of the Box Elder and because the felling was objected to by PCC and supported by Ailsworth Parish Council the TPO was made.

5. We fully support the conservation area and would wish to preserve as many native deciduous trees as possible in both the village as a whole and Maffit Road, which has a lovely rural appearance, which is due to the presence of trees.

PCC would agree with your sentiment, subject to all trees that offer public visual amenity value to the immediate and wider area; and contribute to the character and appearance of the Ailsworth Conservation Area, being preserved.

6. However, this tree has become so large and leaning that it appears to be a potential danger to residents and users of Maffit Road and we are concerned about this danger. Hence we feel it would benefit from tree management/pruning which would not require a formal TPO being imposed.

Your comment above is noted, however, the tree in question is considered to be safe and in a healthy condition, as stated above. The tree can be sympathetically pruned, subject to good arboricultural practices, by way of a TPO Tree Work Application, to address in part the issue of its future 'management/pruning'.

Objections - 3

A letter raising a number of objections with regard to the making of the TPO was received dated 30th November 2023 from Kim Murphy and Gerald Scherrer of 1 The Bungalow, Maffit Road the neighbouring property directly opposite 7a Maffit Road and the Box Elder subject of the TPO. The letter was responded to by the Tree Officer on 13th December 2023.

Please see **Appendix 7 & 8**, for reference.

The Council's Tree Officer considered the objections in the above letter and responded to the relevant points as stated below.

The above Box Elder was protected by the above Tree Preservation Order (TPO) because a S.211 Notice (23/01416/CTR), giving Peterborough City Council (PCC) six weeks Notice that the tree was to be felled, which at the time was protected by growing with the Ailsworth Conservation Area (ACA)

The Box Elder is considered to be in good health & condition, it contributes to the character & appearance of the Ailsworth Conservation Area and offers public visual amenity value to the immediate and wider area/environment. The making of the TPO was supported by Ailsworth Parish Council.

I note your concerns with regards to the safety of the tree, however, there is no evidence to suggest the tree is in an unsafe or dangerous condition that may cause the tree or significant branches to fail causing any damage to the highway or adjacent property.

Unfortunately, the issue of leaves, is not of a serious concern when considering tree retention and protection within the district.

A tree work application can be made to address the issue with regards to the street light/lamp post and any low branches over the highway - Maffit Road.

I'm sorry to hear that the tree is having an effect on the enjoyment of your property due to its height, width and lean. Again, it may be possible to address some of these issues, to a degree, by making a tree work application to undertake sympathetic pruning conducive to good arboricultural practices in the future.

5. ASSESSMENT OF THE PLANNING ISSUES

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 detailed below:

Visual Amenity and Visual Impact as a Group

Government advice states - The extent to which a tree can be seen by the public will inform the authority's assessment of whether the impact on the local environment is significant. The tree, or at least part of it, should normally be visible from a public place, such as a road or footpath, or accessible by the public. It also, states that it may be expedient to make an Order if the authority believes there is a risk of a tree being felled, pruned or damaged in ways which would have a significant impact on the amenity of the area.

The Tree Officer considers the Box Elder subject of the Order to offer public visual amenity value to the immediate and wider area and contribute to the character and appearance of the Ailsworth Conservation Area.

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 considers the Box Elder subject of the Order to be of a good physiological and structural condition with no apparent health problems or structural defects with greater than 40 years life expectancy and no obvious signs of fungi present, at the time of the assessment.

Impact Considerations

Tree impact considerations on the public highway, services, on walls or buildings.

The Tree Officer considered the impact of the Box Elder on the above features to be high, only because the above features are within 5/6m (a set criteria to be assessed in each case) of the Box Elder. However, as stated above, there is no current concern or evidence of any significant impact with regards to the above features.

TPO Serving Procedure

The Tree Preservation Order (TPO) - 23/00009/TPO 7a Maffit Road, Ailsworth, Peterborough was made and served on 22nd November 2024 to protect one individual tree - T.1 Box Elder because the tree was considered to be under threat by way of a Section 211 Notice to fell the tree.

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

Mr Bailey and Dr Baugh's objections have been considered and responded to above.

6. CONCLUSIONS

The Box Elder T.1 subject of the TPO, shown in **Appendix 1**, is considered to contribute to the public visual amenity value of the immediate and wider area and to the character and appearance of the Ailsworth Conservation Area. The tree has been assessed and is considered to be worthy of a TPO, therefore, it is recommended that the TPO is confirmed.

7. Recommendations

The Head of Planning recommends that the TPO is CONFIRMED without modifications.