

REPORT TITLE: CONFIRMATION OF TREE PRESERVATION ORDER 2228 –
LAND AT WHITELEY LANE, FAREHAM

10 JANUARY 2019

PORTFOLIO HOLDER: Councillor Caroline Brook, Portfolio Holder for Built
Environment

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WARD(S): WHITELEY AND SHEDFIELD

PURPOSE

To consider confirmation of Tree Preservation Order 2228 to which two letters of objection have been received.

RECOMMENDATIONS:

1. That having taken into consideration the representations received, Tree Preservation Order 2228 is confirmed.

IMPLICATIONS:1 COMMUNITY STRATEGY OUTCOME

- 1.1 The confirmation of this Tree Preservation Order (TPO) will contribute to the High Quality Environment outcome of the Community Strategy by maintaining the environmental quality and character of the area.

2 FINANCIAL IMPLICATIONS

- 2.1 There are no financial implications for the City Council at this stage. Compensation is potentially payable only where sufficient evidence has been provided by an applicant to support an application to carry out works to the protected tree and where that application is refused.

3 LEGAL AND PROCUREMENT IMPLICATIONS

- 3.1 None

4 WORKFORCE IMPLICATIONS

- 4.1 None

5 PROPERTY AND ASSET IMPLICATIONS

- 5.1 None

6 CONSULTATION AND EQUALITY IMPACT ASSESSMENT

- 6.1 There has been two letters of objection to the TPO which are summarised in this report.

7 DATA PROTECTION IMPACT ASSESSMENT

- 7.1 None Required

8 RISK MANAGEMENT

Risk	Mitigation	Opportunities
<i>Property N/A</i>		
<i>Community Support N/A</i>		
<i>Timescales N/A</i>		
<i>Project capacity N/A</i>		
<i>Financial / VfM N/A</i>		
<i>Legal N/A</i>		
<i>Innovation N/A</i>		
<i>Reputation N/A</i>		
<i>Other</i>		

9 SUPPORTING INFORMATION:

- 9.1 This matter comes to Planning Committee because two objections to making the TPO have been received.
- 9.2 The Council received a notification of works being carried out to trees at Whiteley Lane, Whiteley in January 2018.
- 9.3 A site visit was undertaken by a Council tree officer to establish the possibility of serving a TPO on the trees that line Whiteley Lane. It was clear that some of the trees had recently had their entire canopies removed, although the stems were still standing. The remaining untouched trees were deemed suitable for a TPO.
- 9.4 The works that had been undertaken had a significant impact on the trees in terms of their health and public visual amenity. As it was likely that the remaining trees were under threat, and as they also had high public visual amenity it was deemed necessary to serve a TPO on the remaining trees now subject to this TPO.
- 9.5 There were two letters of objection to the provisional TPO 2218.
- 9.6 TPO 2218 has lapsed. A new provisional TPO, 2228, was made on 6 August 2018. The two letters of objection for TPO 2218 remain valid.
- 9.7 If TPO 2228 is not confirmed it will expire on 5 February 2019.

Summary of Objection Letters

- 9.8 One letter of objection to TPO 2218 was submitted on 11 February 2018 and directly objects to T4, T5 and G1 of the TPO. No other trees within the TPO were referred to in this objection.
- 9.9 The objector expresses concern that “these trees overhang their garden in a dangerous and threatening way.”
- 9.10 The TPO will restrict them in “trying to make the trees safe” and that the trees currently restrict them from enjoying part of their garden because “some of the limbs are diseased and dead.”
- 9.11 Concern is raised over the ownership of the land on which the trees subject to TPO 2218 are located. The objector specifically raises concern in relation to where liability would rest in the case of injury or damage.
- 9.12 The objector states that the “trees have not been maintained for over 20 years and that they not have large heavy limbs that sometimes break off”.
- 9.13 The objector states that with some maintenance, the trees “would be greatly improved and less of a danger”.

- 9.14 Objection letter two objects to the entire TPO 2218 and was submitted on 23 February 2018.
- 9.15 In particular the objection expresses concern over not knowing who owns the land.
- 9.16 They are also concerned that no maintenance has been undertaken in the “past 10 years (since they have lived there) which has led to excessive ingress into their land and their neighbours land due to overhanging branches.” This lack of maintenance “goes against the amenity benefit of the local area”.
- 9.17 Making a TPO will make it even more unlikely that the trees will be managed appropriately, the lane will not benefit local amenity and will become “unwelcome, dark and overall much less desirable locality.”
- 9.18 The objectors say that the trees have caused issues to their property and that of their neighbours, such as:
- a) Leaves and acorns blocking guttering and drains causing flooding and damage to their property.
 - b) Regular vermin issues due to excessive leaf build up.
 - c) Reduction in light due to overhanging branches.
 - d) Numerous seedling growth in their laws, flower beds, cavities and drains.
 - e) Patios and outbuilding being coated in green mould due to a reduction in light, this renders the surfaces slippery and extremely unsafe.
- 9.19 The objectors consider that the ingress of branches into their property affects their rights as property owners to peacefully enjoy their property.
- 9.20 The objectors considers that the work already undertaken benefits and “enhances the local area by allowing more light into the lane and has therefore made it more open and encouraging for pedestrians and vehicles alike.”
- 9.21 Before the works were undertaken, the Council Refuse Lorry and other large vehicles were unable to readily access the lane due to height restrictions.
- 9.22 The trees cause damage to the telegraph lines that runs through the locality by rubbing the lines in windy weather.
- 9.23 The objector also requests that the current works be completed rather than left in their current state, believing that the “unfinished” works have created a “false image” of the works and their relationship with the surrounding area. In that sense, the objector believes that the works undertaken to date have “brought significant amenity benefit to the local area.”

Summary of Support Letter

9.24 There are no letters of support received for confirmation of TPO 2228.

Arboricultural Officer's Response

9.25 Government guidance states that “orders should be used to protect selected trees if their removal would have a significant negative impact on the local environment and its enjoyment by the public.”

9.26 Amenity is not defined in law, however on this occasion the officer made a visual assessment and subsequently undertook a Tree Evaluation Method for Preservation Orders (TEMPO) assessment. The results of the TEMPO assessment are as follows:

Condition & suitability for TPO	Good	Highly suitable	5 points
Retention span (in years)	100+	Highly suitable	5 points
Relative public visibility & suitability	Large trees, or medium trees clearly visible to the public	suitable	4 points
Other factors	Tree groups, or principle members of groups important for their cohesion	N/A	4 points
Expediency assessment	Immediate threat to tree	N/A	5
Total			23 points awarded – Definitely merits TPO.

- 9.27 The trees form an integral part of the street scene and make a significant contribution to the amenity value of the area. The TEMPO assessment has been used as a guide in deciding whether to serve a TPO or not. The results of which confirm that the trees are of sufficient public benefit and public visual amenity value to be protected from a TPO.
- 9.28 The TPO does not prevent maintenance or the pruning of overhanging branches from being carried out, as long as the Council receives a valid application which justifies the works requested. Neither does the TPO prevent the removal of low limbs that are causing an obstruction to the highway.
- 9.29 A Land Registry search shows that title to the land is unregistered and therefore the Council does not know who owns the land.
- 9.30 Many of the tree related problems highlighted in the objection letters, for example, leaves, vermin, reduction in light, seedling and moss growth are not sufficient reason to warrant removal of the trees. Similarly these reasons do not justify any significant remedial works that would result in a significant reduction to the amenity value that they currently present.
- 9.31 The Secretary of State's view is that the higher amenity value of the tree or woodland and the greater any negative impact of proposed works on amenity, the stronger the reasons needed before consent is granted.
- 9.32 In the decision of the Court of Appeal in *Perrin v Northampton BC* it was considered that carrying out works to a tree covered by a TPO requires no application if the works are to prevent or abate a nuisance. There is however considerable uncertainty as to the correct interpretation of the phrase "prevention or abatement of a nuisance". It may be interpreted in this case as "only where the encroachment of B's tree onto A's land actually causes damage-such as overhanging branches shading A's crops or encroaching roots damaging the foundation of A's house." (Mynors, *The Law of Trees, Forest and Hedges*, Second Edition.)
- 9.33 In light of the point above, 9.32, and the case in hand, the recommending officer is of the opinion that the nuisances highlighted in the objectors' comments do not constitute a nuisance in law. Therefore these reasons should not warrant the removal of the trees now subject to this provisional TPO.
- 9.34 The works that were undertaken prior to this TPO being made have significantly affected the trees' contribution to local public amenity. So much so that those trees that have had work undertaken are no longer worthy of protection and they are unlikely to survive for more than 5 years. Therefore they have not been included in this TPO. However, the remaining trees are still worthy of protection hence this TPO.
- 9.35 As previously highlighted, works to abate a nuisance such as damage to telegraph lines can be dealt with without the requirement for a TPO

application. It does however remain up to the owner of the telegraph lines to maintain the lines appropriately.

- 9.36 The unfinished works that are highlighted in one of the objection letters, “chipping mounds, felled branches and generally unfinished works” can be completed without an application if they do not require the removal of live material from any tree subject to a TPO. If however they do require the removal of live material from a tree subject to TPO an application can be submitted to the Council.
- 9.37 The trees subject to this TPO are deemed to be of significant amenity value within the local area, are under threat and any issues in relation to the trees’ impact on neighbouring properties can be discussed with the Council’s tree officers and potentially dealt with through a TPO application or as an exemption in the case of abating a nuisance or removing deadwood.

BACKGROUND DOCUMENTS:-

Previous Committee Reports

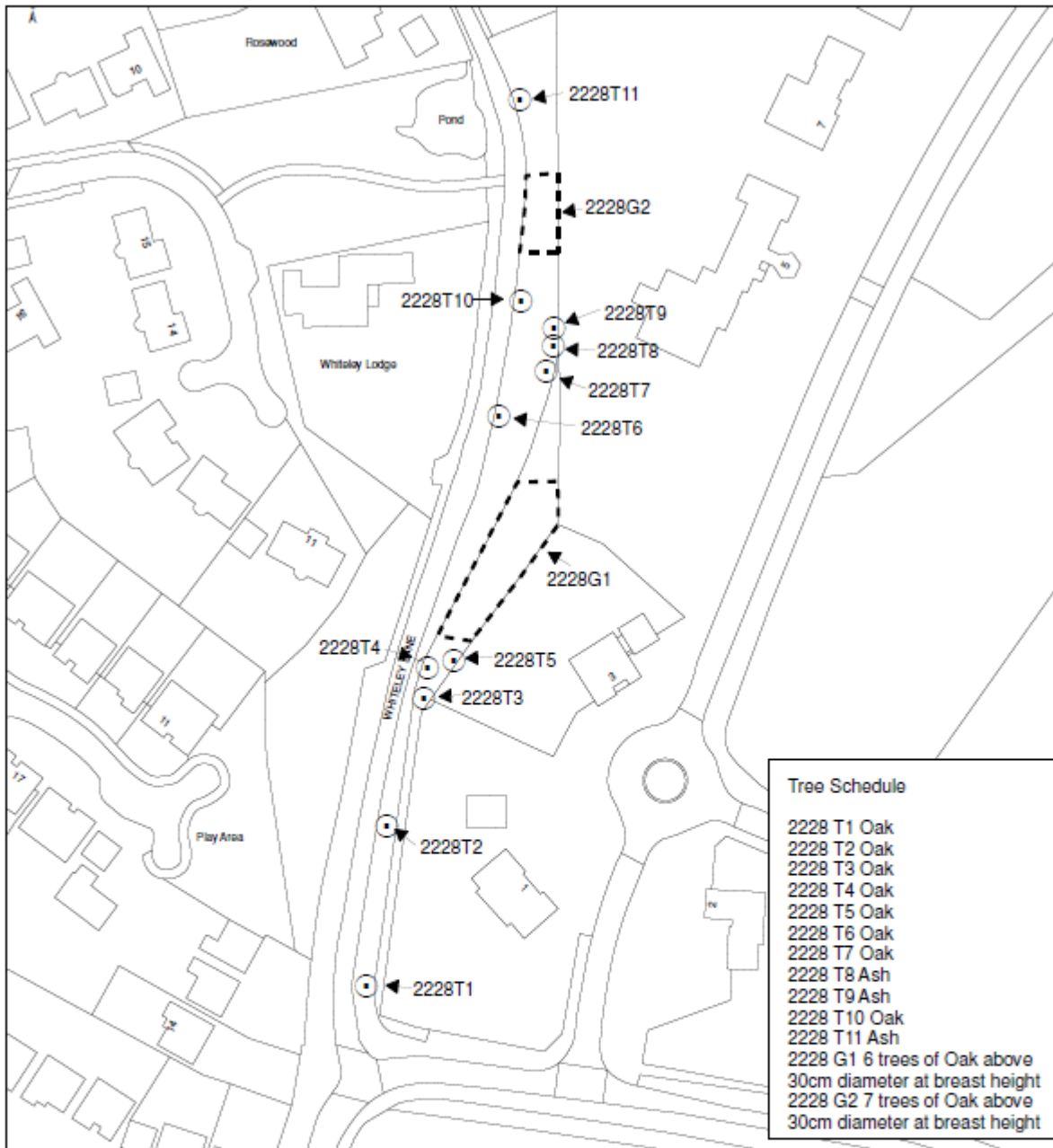
Report PDC1112 – Planning Committee 26 July 2018





Other Background Documents:

None

APPENDICES:

Appendix 1 Plan



-  A1 Area
-  G1 Group
-  W1 Woodland
-  T1 Tree

TOWN AND COUNTRY PLANNING ACT 1990
Section 198 - 201

Tree Preservation Order No. 2228

Location: Land at Whiteley Lane
Titchfield
Fareham
Hampshire

OS Grid: 4629

Scale: 1:1000 @ A4

Date : 27 July 2018



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