

REPORT TITLE: CONFIRMATION OF TREE PRESERVATION ORDER TPO2253 –
2 BEREWEEKE AVENUE, WINCHESTER

20 JUNE 2019

REPORT OF CABINET MEMBER: Councillor Jackie Porter, Cabinet Member for
Built Environment and Wellbeing

Contact Officer: Ivan Gurdler

Tel No: 01962 848 403

Email: igurdler@winchester.gov.uk

WARD(S): ST BARNABAS

PURPOSE

To consider confirmation of Tree Preservation Order 2253 to which three letters of objection has been received.

RECOMMENDATIONS:

1. That having taken into consideration the representations received, Tree Preservation Order 2253 be confirmed.

IMPLICATIONS:

1 COUNCIL 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 COMMUNICATION

- 6.1 On serving of the TPO, the landowner and immediate neighbours were notified and allowed 28 days to object.
- 6.2 At the time that TPO 2253 was served there was three letters of objection.

7 ENVIRONMENTAL CONSIDERATIONS

- 7.1 Trees have a significant impact on our surroundings, the quality of our lives and where we live. They form an important and integral part of the countryside and in every town and village throughout the District. Trees support the natural beauty of our countryside and diversity of our natural wildlife.

8 EQUALITY IMPACT ASSESSEMENT

- 8.1 None.

9 DATA PROTECTION IMPACT ASSESSMENT

- 9.1 None required.

10 RISK MANAGEMENT

10.1 None.

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

11 SUPPORTING INFORMATION:

- 11.1 This matter comes to Planning Committee because three objections to the making of TPO 2253 have been received and have not been withdrawn.
- 11.2 TPO2253 was issued on 25th January 2019 to protect 21 trees at the property. The Council received notification that the site had been sold for development and the trees were at risk for felling. If TPO 2253 is not confirmed, the TPO will expire on 25th July 2019.
- 11.3 A development proposal was received which included the removal of one large mature significant Pine adjacent to Bereweeke Avenue and the removal of 2 smaller Pines from the group adjacent to Bereweeke Road.
- 11.4 The trees on the property are mature specimens of good health and vitality. The trees are significant species within the local landscape and provide continuous avenues of trees that are located both sides of Bereweeke Road and Bereweeke Avenue.
- 11.5 The trees located along the eastern boundary of the property can be viewed from the flats at Eastacre. The upper canopies of these trees extend above the roof space of the dwelling at No2 Bereweeke Avenue and can be viewed from Bereweeke Avenue. The trees located on the southern and western boundaries of the property can be viewed from the public highways both ways on Bereweeke Road and Avenue giving them high visual public amenity value.
- 11.6 The protection of the trees by a Tree Preservation Order is in accordance with Government guidance which 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.*" Any tree removal at this property for development purposes would interrupt the current continuous line

of trees and would have a detrimental impact on the visual public amenity value that the trees currently provide.

11.7 The Secretary of State's view is that the higher the amenity value of the tree or woodland and the greater any negative impact of proposed works would have on amenity, the stronger the reasons needed before consent is granted.

11.8 There are no arboricultural reasons or justification provided for the felling of any tree at this property, there is no history of tree failure and no reports of structural damage being caused to the dwelling or neighbouring properties.

12 OTHER OPTIONS CONSIDERED AND REJECTED

12.1 At the time that TPO 2253 was served, the Council received 3 letters of objection.

12.2 **Summary of objections received:**

None of the 21 trees included in the TPO have cultural, historical biodiversity or rarity value and that only a few of the trees were under threat from development, and that none of the trees meet to the necessary criteria for protection from a TPO.

12.3 The objectors opinion is that the Horse Chestnut tree and Lime on the eastern boundary are not good specimens and block out valuable light from the residents in Eastacre. The trees have low visual public amenity value as they cannot be viewed from the public highway. The trees make the paths within the site hazardous from wet autumn leaves, and removing them would enhance the lives of residents in Eastacre.

12.4 The Yew trees that abut to Berewecke Road are not under immediate threat from felling as they act as screening from Berewecke Road and the TPO will inhibit their maintenance for cutting back off the highway.

12.5 The objector disagrees that the 11 Pines that abut Berewecke Road have no amenity value as the only view the public have of them is the lower stems as the foliage of the trees are metres above the ground. The objector has concerns in the event of tree failure during stormy weather the trees would damage the house.

12.6 The objector's opinion is that they will not be able to sell the property with the TPO on the trees and their only option may be is to sell to a developer.

12.7 One letter of objection was received from a resident in Eastacre who has stated she would not want the Horse Chestnut trees destroyed but reduced by half to two thirds.

13. Arboricultural Officers response

- 13.1 The Trees are significant features in the local landscape at Bereweke Road and Avenue. There is currently no evidence that the trees are in poor health to suggest they may fall or are otherwise dangerous. The Pines are good examples of their species with good extension growth and vitality.
- 13.2 The Pine trees with clear, tall stems with canopies high above the ground are normal for this species of tree. Long and short distance views of the trees of the trees can be achieved from both directions on Bereweke Road and Avenue.
- 13.3 The Horse Chestnut and Lime are located on the eastern boundary of the property in the rear garden of No2 Bereweke Avenue. The lower parts of the trees are screened from public view but the upper parts of the trees extend above the roof space of the dwelling and can be viewed from the public highway in Bereweke Avenue. Located behind the trees is Eastacre which is a WCC sheltered housing scheme comprising of 37 dwellings. The trees are adjacent to the communal gardens of Eastacre giving the residents full visual public view of the trees, and therefore the trees meet the necessary criteria for protection from a TPO that is in accordance with the Government guidance outlined below.
- 13.4 Government guidance states that trees located in the rear gardens of property should not normally be protected by a TPO without good reason however there are circumstance where the legislation allows trees with limited visual public amenity to be protected.
- 13.5 Government guidance further states that trees subject to protection from a TPO or parts of them should be visible from a public place. However Vincent Fraser QC sitting as a Deputy High Court Judge in *Wilkinson Properties v RB Kensington & Chelsea* in 1949 stated:
- “It is for this reason that the guidance goes on to recommend that the tree or part of it should normally be visible from a public place. Visibility from a public place is the normal of establishing that there is a reasonable degree of public benefit, but is not the only way. Counsel for the claimant quite properly accepted that a case of public benefit could be made out to justify the TPO even where the tree is not visible from a public place and that one example where this might occur is where a significant number of members of the public could see the tree from their properties”*
- 13.6 The objector’s opinion is that the Horse Chestnut Tree and Lime have low visual public amenity value because the trees are located in the rear garden of their property and there are no public views of the trees. However the judgement above makes it clear that tree preservation orders may be used to protect trees where members of the public may view the trees from their properties.

13.7 Following discussions with developers there is a present and a future threat to the trees from felling and construction activities of which is a trigger point for the Local Authority to serve the TPO. Under the UK planning system, local authorities have a statutory duty to consider the protection of trees assessing planning applications. The confirmation of this TPO will satisfy this duty.

BACKGROUND DOCUMENTS:-

Planning Practice Guidance – Tree Preservation Orders and trees in conservation areas.

TEMPO

The following Tree Evaluation Method for Preservation Orders (TEMPO) assessment has been carried out to evaluate the amenity value of the trees.

Condition & suitability for TPO	Fair	Suitable	3 points
Retention span (in years)	20-40 Years	Suitable	2 points
Relative public visibility & suitability	Large or medium trees	Suitable	4 points
Other factors	Tree groups or members of groups important for their cohesion		4points
Expediency assessment	Immediate threat to trees		5 Points
Total			points awarded – 18

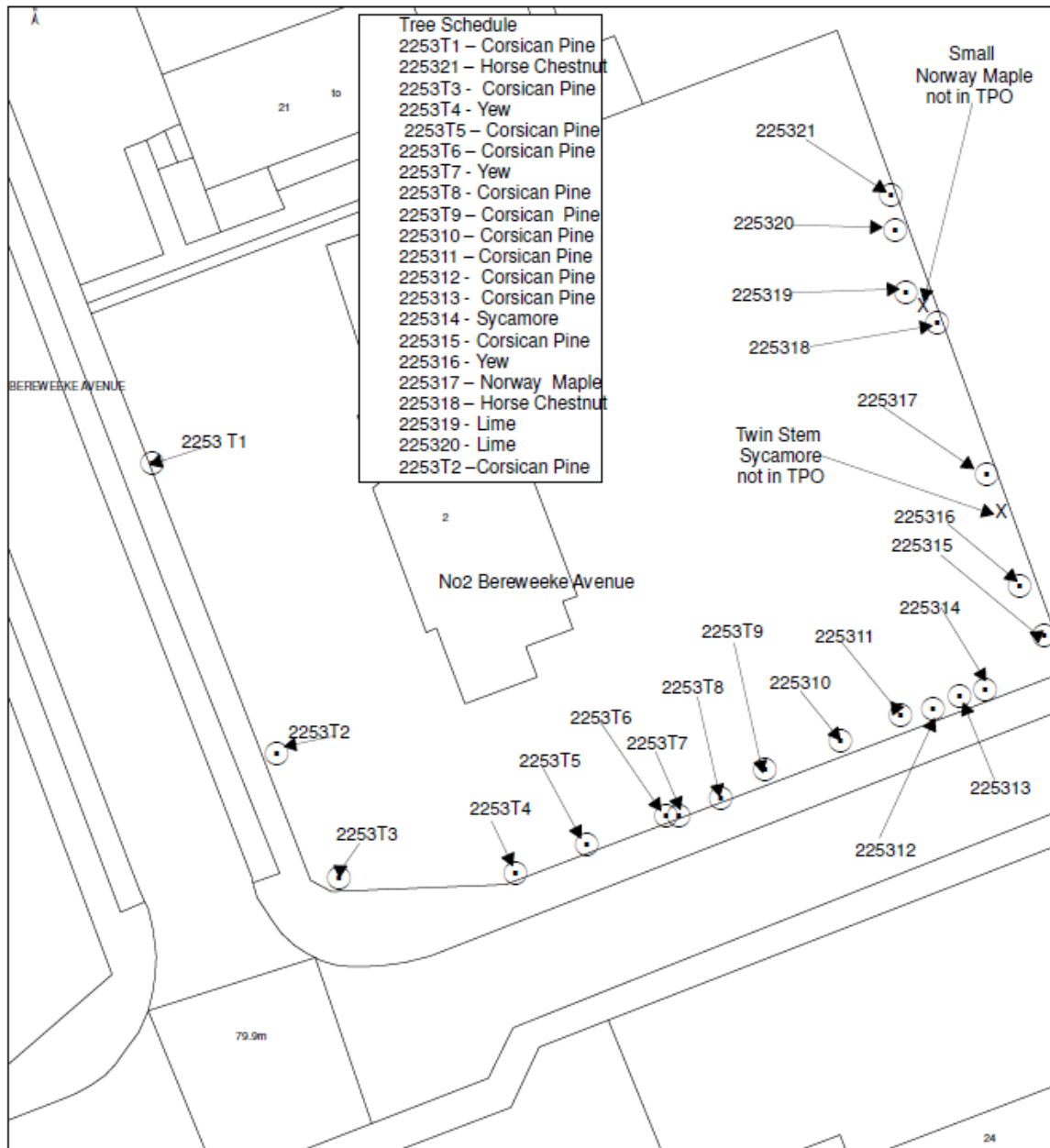
The trees score a total of 18 points which establishes that the trees definitely merits a TPO, and confirms that the trees are of sufficient public visual amenity value to be protected by a TPO.

Previous Committee Reports:- None.

Other Background Documents:- None.

APPENDICES:

Appendix 1 – Map of the site.



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

TOWN AND COUNTRY PLANNING ACT 1990
Section 198 - 201

Tree Preservation Order No. 2253

Location: No2 Bereweke Avenue
Winchester
Hants

OS Grid: 4730

Scale: 1:300@ A4

Date : 22:1:19



Winchester
City Council

Director of Operations
Winchester City Council
POBox 497, City Offices
Colebrook Street
Winchester
Hampshire
SO23 9DD

Telephone 01962 840 222
Fax 01962 841 365