

## **Confirmation of Tree Preservation Order**

**Land at Land at Fintry, Pinewood Road Newcastle under Lyme**

**Tree Preservation Order No.172 (2015)**

Town & Country Planning Act 1990

Town & Country Planning (Tree Protection) (England) Regulations 2012

### **The Provisional Order**

The order protects two Oak trees on land within the front garden of Fintry on Pinewood Road, Ashley. The order was made to safeguard the longer term visual amenity that these trees provide following concerns that the owner may wish to fell or extensively prune these trees.

On 7<sup>th</sup> July 2105 the Tree Preservation Order was made to safeguard the longer term visual amenity that these trees provide.

Approval is now sought for the Order to be confirmed as amended.

**The 6 month period for this Order expires on 7<sup>th</sup> January 2015.**

### **RECOMMENDATION**

That Tree Preservation Order No 172 (2015), on land at Fintry, Pinewood Road Ashley is confirmed as amended and that the owners of the site are informed accordingly.

### **Reasons for Recommendation**

It is considered that the trees have a high amenity value, and that their loss or disfigurement would have a negative impact upon the visual amenity, not only of the site but also to the locality.

Other adjacent trees are affected by Tree Preservation Order No. 9 (1967). Prior to this order being made it had become apparent that the two roadside Oaks are not covered by Tree Preservation Order No 9.

An assessment of the site found the two affected Oak trees both worthy of an order, other roadside trees did not meet the criteria for protection. The two Oak trees occupy a highly prominent position at the front of the property and are clearly visible from Pinewood Road.

The trees make a significant visual contribution to the character of Ashley Heath being at the forefront of views of the Heath, when observed from the wider valley setting (from the Jugbank direction), and from nearby public footpaths.

There is concern of a risk that these trees may be felled or extensively pruned in a way that would damage their health and appearance.

In order to protect the long-term wellbeing of these trees they should be protected by a Tree Preservation Order.

### **Representations**

Following the TPO publicity process, a statement of objection, and subsequent email communications to members of 3<sup>rd</sup> and 7<sup>th</sup> December 2105 (which were outside the 28 day period allowed for comment) were received from the owner of Fintry:

1.1 The objections cover many points that include:

- **Procedural aspects** of the way in which the council served the TPO, which the objector feels was incorrect.
- **Technical aspects concerning permissible work to trees already affected by Tree Preservation Orders.**
- The objector considers that it is not **expedient to protect these trees and that they do not meet the amenity requirement.**

1.2 **Procedural Aspects**

The objector points out a word on the schedule that is incorrectly placed. The word ‘none’ below the schedule of work specified has been deleted and as such the recommendation is to confirm the order as amended.

The objector points out in his statement that the order was not served on his son (whose details are on the electoral register). He considers the order has not been served correctly. The Council ascertains land ownership by carrying out a Land Registry search, not by checking the electoral register. To cover all eventualities, it is usual practice that the Council would serve letters, one addressed to the owner(s) (individually if more than one) and one addressed to ‘the occupier’. The objector followed this response with an email to members of 7<sup>th</sup> December 2015 stating that only two letters were posted and as such the order was incorrectly served. Your Officer can confirm that two letters (with copies of the order) were indeed delivered to Fintry, one addressed to the objector, and one to the owner/occupier of Fintry. Following consultation with the council’s Legal section, your officers can confirm that it is considered that the correct procedure has been followed.

1.3 **Technical aspects concerning permissible work to trees already affected by Tree Preservation Orders.**

The objection statement refers to a previous refusal for pruning work at Fintry on trees affected by another Tree Preservation Order and for which the objector made no appeal. These matters are not connected to the process for serving and confirming a new Tree Preservation Order, and as such are not discussed in detail in this report.

Confirmation of this Tree Preservation Order will not prevent the objector from applying for works to his trees, and should he wish he may appeal any future refusal or condition within 28 days of receiving the decision. To date, no application for tree works for trees affected by TPO172 has been received.

1.4 The objector’s statement considers that **it is not expedient to protect these trees, and that they do not meet the amenity requirement.**

The Local Planning Authority is empowered to make Tree Preservation Orders if ‘*It appears to be expedient and in the interests of amenity to make provision for the preservation of trees.*’ The objector queries why T1 and T2 haven’t been protected up to now. As is the case for all local authorities, in many situations where trees (or woodlands) may merit protection on amenity grounds it may not be expedient to make them the subject of an Order. For example, it is unlikely to be necessary to make an Order in respect of trees which are under

good arboricultural or silvicultural management, and for which there is no reason to believe that there is a risk of them being felled, pruned or damaged in a way which would have a significant impact upon the amenity of the area. Local authorities may only make a TPO where it appears to them to be 'expedient' to protect a tree, group of trees or woodland which makes a significant contribution to amenity. In this case there wasn't sufficient reason to believe that the Oak trees were at risk until the intention to prune these trees was made clear by email. The objector has stated that the trees were not under immediate threat from felling or damaging to the point of destruction, although it is admitted that pruning works were to be carried out on these trees. Given our knowledge of the objectors' previous desire to carry out major pruning it was considered that there **was** a risk of the trees being felled or pruned in a way that would damage their health and appearance. The required assessment of the present and future contribution of trees on this site was undertaken. The outcome was that two Oak trees that weren't currently protected met the criteria and had significant amenity value and that as a result of the risk it was considered expedient that an Order be served on these trees.

- 1.5 There are trees at Fintry that are affected by another Tree Preservation Order (Tree Preservation Order No 9:1967), and there are also trees at the property that did not meet the criteria for protection by an Order.
- 1.6 As members will be aware, this item (Agenda item 12 of the agenda of 8<sup>th</sup> December 2015) was deferred to allow time for a site visit following new information from the objector stating that the effect of the Order would be to deprive the property of the benefit of the works recently approved and undertaken. This site visit took place on 21<sup>st</sup> December 2015.
- 1.7 The effects of the approved works on T81 (an Oak tree standing between T1 and the objectors' home covered since 1967 by Tree Preservation Order No. 9) were assessed. It was noted that works had been carried out accurately and to a good standard and that they considerably increase the amount of light that reaches the objectors home, (whilst reducing other effects such as effect of leaves blocking gutters). The approved works have been completed without a negative effect upon the visual appeal of the tree.
- 1.8 Following inspection of the position of T1 and T2 and the recent approved pruning, your officers are not of the opinion that the T1 and T2 dramatically add to the overshadowing effect on Fintry, (given the positions of other intervening trees) and that the benefit gained by the approved works upon T81 does ensue.
- 1.9 Discussions were had concerning the objectors' intention to remove additional smaller trees and shrubs on the roadside frontage. This will further increase light penetration to the objectors' garden.
- 1.10 The structure of T1 (high crown) would mean that the amount of pruning works that would be permissible without causing harm to the visual appeal of this tree would be quite limited, although there may be scope for some minor thinning and selective removal of minor branch tips which may give some increase in light penetration to the objectors' garden.
- 1.11 The full effect of works carried out will be realised once the trees are in leaf in summer. Should the TPO be confirmed your officer would suggest that the objector and his arboricultural consultant consider submitting an application for works to T1 and T2 that would further contribute towards the objectors' requirement, whilst not compromising the trees health or visual amenity. The objector would be able to appeal any refusal decision or condition within 28 days.

- 1.12 A previous application for works to trees at Fintry (ref 15/00070/TWA) was to: *reduce the density of the canopy by 50%, lift the canopy substantially and to remove all branches over the driveway and near electric cables and phone cable and to 'lop three of the trees'*. These works were refused. Whilst the description of the works was considered vague, there was no doubt that the desire was to carry out major pruning which would have significantly reduced the trees safe life, and their visual appeal.
- 1.13 Confirmation of the tree preservation order will not prevent the objector from carrying out works on his trees (as has been completed successfully to increase light levels to his property for T81), however it will allow the council to control the extent of the pruning in a way that will not reduce the trees' safe life, and/or significantly reduce their visual appeal.
- 1.14 The objector challenges the impact that the trees have upon amenity and the process by which the trees are assessed. Your officers' response is that the method of assessment is based upon recommendations under the Tree Preservation Legislation.
- 1.15 The objector 'entirely refutes' that T1 and T2 are visually prominent. Your officer maintains that the trees are at the forefront of views of Ashley Heath from the Jugbank direction and are clearly visible from Pinewood Road and nearby public footpaths.
- 1.16 The objector 'denies' that the trees contribute visually to Ashley Heath. Your officer maintains that the trees contribute visually to Ashley Heath being in a prominent visual location and that they meet the criteria for protection by a Tree Preservation Order.
- 1.17 In the email to members of 3<sup>rd</sup> December the objector states that the trees are not visible from Jug Bank and as such have little amenity value. It is accepted that views of Ashley Heath are restricted from nearby narrow lanes due to hedgerows/copse. The order does not state that the property is visible from Jug Bank, rather that the trees are at the forefront of views of Ashley Heath from the Jugbank direction, the footpath to which the objector refers to is a designated Public Right of Way, from which there are wide views of Ashley Heath, a locality which is characterised by individual properties within a mature treed setting. Your officer maintains that the trees contribute visually to Ashley Heath.
- 1.18 The objector considers that neither tree is worthy of protection:
- T1 due to its position in front of T81 (protected by another Order) which towers above T1.  
  
Your officer acknowledges that T81 (Oak tree to the rear of T1) is an important and visually significant tree, however maintains that T1 to the front of this tree is highly visually prominent roadside frontage tree.
  - T2 due to its being 'misshapen' and 'stunted'.  
It was noted in the assessment that the tree is somewhat 'one-sided' due to the presence of other trees at Fintry, however the tree does have sufficient room for future growth and meets the criteria for protection.
- 1.19 With respect to the objectors' suggestion that the planning committee confirm only T1. Your officer would point out that both trees would meet the requirement for protection by a Tree Preservation Order.
- 1.20 The objector considers that the 'local authority has failed to *'strike the correct balance between the interests of the local community in preserving an amenity and those who have to suffer permanently darkened rooms in summer months where trees dominate the garden*

*environment to the detriment of those denied the opportunity to properly control what is rightfully their property’.*

- 1.21 Your officer considers that recent approved and implemented works to T81 demonstrate how some works can be completed to lessen the impact of trees in a way that will not reduce the trees safe life, and/or significantly reduce their visual appeal.
- 1.22 Further improvements to light penetration will be gained by the removal of trees and shrubs that are not affected by the order, and limited pruning in accordance with BS3998:2010 (for which a Tree Work Application would be required) will go some way further to remedying the objectors concern.
- 1.23 Confirmation of this Tree Preservation Order will not prevent the objector from applying for works to his trees, and should the objector wish he may appeal any future refusal or condition within 28 days of receiving his decision.
- 1.25 Should this Tree Preservation Order not be confirmed then there is a risk that the objector may carry out major pruning works on these trees in a way which could significantly reduce the trees safe life, and their visual amenity.
- 1.26 Your officers do not consider that there is sufficient justification for this order not to be confirmed.
- 1.27 In order to protect their long-term well-being and their future potential as an amenity, the two Oak trees should be protected by a confirmed Tree Preservation Order.
- 1.28 Your officers recommendation is that Tree Preservation Order T172 (2015) be confirmed as amended, and that copies of the confirmed order be served as required.

Date report prepared:  
21<sup>st</sup> December 2015