

DECISION-MAKER:	PLANNING AND RIGHTS OF WAY PANEL
SUBJECT:	OBJECTION TO THE IMPLEMENTATION OF A TREE PRESERVATION ORDER AT 179 WILTON ROAD
DATE OF DECISION:	20 DECEMBER 2011

REPORT OF: HEAD OF STREET SCENE AND COMMUNITY SAFETY

STATEMENT OF CONFIDENTIALITY

None.

SUMMARY

This report covers the objection to the Southampton (179 Wilton Road) Tree Preservation Order 2011. The Order comprises an oak and a beech tree in the rear garden of 179 Wilton Road. (**Appendix 1**).

RECOMMENDATIONS:

- (i) To confirm the Southampton (179 Wilton Road) Tree Preservation Order 2011 without modifications.

REASONS FOR REPORT RECOMMENDATIONS

1. A letter dated the 30th August 2011 was received from a resident of 181 Wilton Road objecting to the tree preservation order (TPO). (**Appendix 2**)
2. The trees, an oak and a beech, are considered to have a visual amenity value (**Appendix 3**) and their loss would be detrimental to the local environment and their enjoyment by the public. A Tree Evaluation Method for Preservation Orders (TEMPO) has been carried out and confirms the trees definitely merit protection. (**Appendix 4**)
3. Following a site visit, the general health and condition of the tree and impact of the trees on 179 Wilton Road was assessed and discussed. It was advised that the trees were in good health and condition and did not impact unduly on 179 Wilton Road. A resident of 181 Wilton Road has confirmed his objection to the TPO and the matter has been referred to the Planning and Rights of Way Panel.
4. The author considers the objections raised are not significant and that the TPO should be confirmed without modifications.

CONSULTATION

5. All adjacent properties to 179 Wilton Road were served with copies of the TPO by Legal Services with a covering advisory letter.

ALTERNATIVE OPTIONS CONSIDERED AND REJECTED

6. Do Nothing – This could lead to the early uncontrolled felling of these important amenity trees.

DETAIL

7. Following a request from the owner of 179 Wilton Road, a TPO was placed on a mature oak and beech in the rear garden of the foresaid property. The owner's reason was to ensure the long-term protection of the trees which had been looked after by her family since 1951.
8. A Tree Officer visited the owner of 179 Wilton Road on the 2nd August 2011 to assess the trees. The officer found both trees in good health and a TEMPO

evaluation scored both trees as suitable for protection with a TPO.

9. The TPO was served on the owner and neighbouring properties on the 15th August 2011. One letter of objection to the TPO was received from a resident of 181 Wilton Road.
10. The objections raised by a resident of 181 Wilton Road can be summarised as follows:
 - The trees have outgrown their position.
 - The trees have limited visibility and amenity.
 - The trees are well managed and not under threat
 - The trees are unevenly balanced
 - The trees may damage their property
 - The trees are a significant health and safety risk
 - Encroachment

All of the above points were answered in a letter from the Tree Officer, dated the 12th September 2011. (**Appendix 5**)

11. Further to the above letter the Tree Officer visited the residents of 181 Wilton Road on the 30th September 2011 to discuss the matter in detail. The residents emphasised their main reasons for objecting were:
 - that there was no threat to the trees;
 - the trees encroached over their property;
 - and, the trees blocked out direct sunlight to their property.
12. The Tree Officer agrees that there is no current threat to the trees. However, in this case the TPO is made to ensure the trees are protected in the long-term. Property ownership can change at short notice and such changes can be viewed as a potential threat to unprotected trees.

Currently the tree canopies encroach by 2 to 3 metres over part of the rear garden of 181 Wilton Road, which is not considered by the Tree Officer to be significant. The trees owner (179 Wilton Road), has personally informed the Tree Officer that she has no objection to the encroachment being cut back by her neighbours.

The position of the trees on the south west side of the rear garden of 181 Wilton Road means that for a couple of hours in the afternoon the sun is screened by the trees. (**Appendix 6**). This is not considered by the Tree Officer to be adversely affecting the neighbouring property. Concerning the legal right to light the Prescription Act 1832 section 3 refers to the right of light. If it can be established that access and use of light to and for any dwelling house, workshop or other building has been enjoyed without interruption and without written consent or agreement for 20 years, then an absolute right has been created. This is not the case in this instance.

13. The making of the TPO will not unduly affect the rights of the residents of 181 Wilton Road. Under common law they would be permitted to cut back the tree canopies to their boundary as long as they did not trespass on to the land of 179 Wilton Road without permission from the owner. With a TPO in place there is now a legal requirement to obtain the permission of the Local Authority

to prune the tree and, as long as the work is considered reasonable by a Tree Officer and not detrimental to the trees health and amenity, permission will be granted.

To this effect a resident of 181 Wilton Road recently applied for permission to crown reduce the whole canopy of the beech tree (T1 on the TPO) by 25%. Whilst the Tree Officer considered this excessive, in light of recent works over the last two years, permission was granted to reduce the canopy spread by circa 15%. However, in order to carry out this work permission will need to be obtained from the owner of 179 Wilton Road to allow the tree contractor's to enter onto the land to carry out the works and this permission would be required even if there was no TPO on the trees.

FINANCIAL/RESOURCE IMPLICATIONS

Capital

14. None.

Revenue

15. If the TPO is confirmed, there will be the cost of administering the service of the confirmed TPO and any subsequent tree work applications. .

Property

16. None.

Other

17. If the TPO is confirmed, compensation may be sought in respect of loss or damage caused or incurred in consequence of the refusal of any consent required under the TPO or of the grant of such consent which is subject to condition. However, no compensation will be payable for any loss of development or other value of the land, neither will it be payable for any loss or damage which was not reasonable foreseeable.

LEGAL IMPLICATIONS

Statutory power to undertake proposals in the report:

18. In accordance with the Constitution any decision relating to council trees, unless delegated, will be determined by the Planning and Rights of Way Panel.

Other Legal Implications:

19. The making or confirmation of a TPO could interfere with the right of the property owner peacefully to enjoy his possessions but it is capable of justification under Article 1 of the First Protocol of the European Convention on Human Rights as being in the public interest (the amenity value of the tree) and subject to the conditions provided for by law (the Town and Country Planning Act 1990) and by the general principles of international law.

20. In so far as the tree is on residential property the making or confirmation of a TPO could interfere with a right of a person to respect for his family life and his home, but is capable of justification as being in accordance with the law and necessary in a democratic society for the protection of the rights and freedom of others. (Article 8 of the European Convention on Human Rights).

POLICY FRAMEWORK IMPLICATIONS

21 None.

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SUPPORTING DOCUMENTATION

Appendices

1	The Southampton (179 Wilton Road) Tree Preservation Order 2011
2	Objection letter from residents of 181 Wilton Road
3	Photographs of the TPO trees
4	Tree Evaluation Method for Preservation Orders - TEMPO
5	Tree Officer's response letter dated 12 th September 2011
6	Aerial photograph

Documents In Members' Rooms

1.	None.
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Background Documents

Title of Background Paper(s)

Relevant Paragraph
of the Access to
Information
Procedure Rules /
Schedule 12A
allowing document
to be
Exempt/Confidential
(if applicable)

	Town and Country Planning Act 1990 as amended.	
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Background documents available for inspection at:

FORWARD PLAN No: N/A

KEY DECISION?

WARDS/COMMUNITIES AFFECTED:	Shirley
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Scale : 1:1250

Date 06 December 2011

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179 Wilton Road

