

<b>DECISION-MAKER:</b>	PLANNING RIGHTS OF WAY PANEL		
<b>SUBJECT:</b>	OBJECTION RECEIVED REGARDING THE MAKING OF THE SOUTHAMPTON (8 MOUNTAIN ASH CLOSE) TREE PRESERVATION ORDER 2019.		
<b>DATE OF DECISION:</b>	11 FEBRUARY 2020		
<b>REPORT OF:</b>	HEAD OF PLACE		
<b><u>CONTACT DETAILS</u></b>			
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<b>STATEMENT OF CONFIDENTIALITY</b>
None

### **BRIEF SUMMARY**

A request was received to fell two Oak trees that form part of a linear group feature to the local area. The loss of the trees was considered to have a negative impact on the local amenity and environment and accordingly a tree preservation order was made. The making of a tree preservation order has been objected to. Members are required to consider the objection and whether it is expedient to confirm the TPO in the interests of amenity of the area.

### **RECOMMENDATIONS:**

- (i) To confirm The Southampton (8 Mountain Ash Close) Tree Preservation Order 2019, without modifications.

### **REASONS FOR REPORT RECOMMENDATIONS**

1. On the 4<sup>th</sup> June 2019 – A webform was received by a resident of 8 Mountain Ash Close requesting permission to fell two oak trees in the rear garden of the ex-authority property. Guidance is given on the City Council's website informing residents of ex-authority properties to make contact with the City Council to gain permission as the trees may be protected by a covenant within the title deeds that requires the owners to first make contact with the Council.
2. The main reason given for the request to fell was in relation to branches that fell into the rear garden of the property and the concern that this raised for the residents who have young children. (See Appendix 1)
3. On the 12.08.19 – A site visit was undertaken by a City Council tree officer to assess the trees and either agree to the felling or to make a tree preservation order to prevent the loss of the trees.
4. The trees were found not to have any notable defects that would warrant the felling of the two trees. There was some remedial work that could be undertaken, such as raising the trees canopy over the garden and the removal of deadwood. This information was passed on to one of the residents of the property.

5. There were no signs of significant branch failure, but the tree officer was able to see that some small limbs had been removed and left stubs. It was not known if these stubs were as a result from tidying up the remaining limb after a failure or were a result of small limbs being removed. Other dead wood was observed in the canopy and some showing signs that parts have fallen in the past.
6. The impact of the loss was calculated by the use of an industry accepted method for calculating if a tree is suitable for a tree preservation order. This method is known as TEMPO, which is an acronym for Tree Evaluation Method for Protection Orders and gives a score dependant of various points, one of which is visual amenity. When officers complete a TEMPO form, the aim is to be conservative in the scoring so the end value can be increased but it would be extremely difficult to lower the score. Based on the score given by the assessment, it indicated that a tree preservation order would be suitable in this case. (See appendix 2)
7. On the 20.08.19 - A tree preservation order was made and served on the address. Copies were also served on the neighbouring properties. (See appendix 3)
8. On the 17.09.19 – An email was received from a resident at the address raising an objection to the making of the tree preservation order.
9. The main points raised in the objection were over the safety of the tree in relation to branches falling. Further comments were made over the making of the order on the basis that the loss would result in a negative impact on the local amenity. The resident did not agree that the amenity should be based on what the public can see and has highlighted that the trees are privately owned and are not an 'exhibition to the general public'.
10. The resident has also highlighted that the trees could be removed and replaced somewhere else, such as a local park and that this would have a higher amenity than the trees in the rear garden of the property.
11. On the 8.10.19 – An email was sent to the resident who lodged the objection. Information was given regarding the fallen limbs that were reported and also further advice was given regarding the removal of deadwood from a protected tree being exempt work and not requiring an application to be submitted. (See appendix 4)
12. The resident was given information regarding public amenity and it was explained the tree preservation orders were based on the visual amenity of the trees to the public. A copy of the industry accepted method of evaluating the trees for a tree preservation order was supplied. Within this document, visual amenity is assessed as part of the process.
13. The resident was informed that if they still have concerns regarding the trees condition the tree then they should make contact with a tree surgeon or arboricultural consultant. Any information passed to the city council tree officer would be reviewed and if it demonstrates a requirement to remove the trees, then the tree preservation order would not be confirmed and they would be able to be felled. No further information was received from an independent expert to support the claim that the trees posed a demonstrable risk to the residents.
14. There have been two further attempts to make contact with the resident in relation to the objection, however contact was not successful, therefore the

objection to the making of the tree preservation order is considered as being upheld by the resident. As such the tree preservation cannot be confirmed by the tree officer without agreement by the elected members of the planning & rights of way panel.

### **ALTERNATIVE OPTIONS CONSIDERED AND REJECTED**

15. To not confirm this Order. This would not offer the legal protection which is considered prudent for the future reasonable management of the trees.

### **DETAIL (Including consultation carried out)**

16. NONE

### **RESOURCE IMPLICATIONS**

#### **Capital/Revenue**

17. Cost will be those associated with the administration of confirming the Order and administration of any subsequent applications made under the Order.

#### **Property/Other**

18. 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 of damage which was not reasonably foreseeable

### **LEGAL IMPLICATIONS**

#### **Statutory power to undertake proposals in the report:**

19. In accordance with the Constitution, the officer has delegated power to make, modify or vary, revoke and not confirm Tree Preservation Orders under Sections 198 and 201 of the Town and Country Planning Act 1990; and to confirm such orders except where valid objections are received. If objections are received then the Planning and Rights of Way Panel are the appropriate decision making panel to decide whether to confirm the order or not.

#### **Other Legal Implications:**

20. The making or confirmation of a Tree Preservation Order could interfere with the right of the property owner peacefully to enjoy their possessions but it can be justified under Article 1 of the First Protocol as being in the public interest (the amenity value of the trees, tree groups and woodlands) and subject to the conditions provided for by law (the Town and Country Planning Act 1990) and by the general principles of international law

### **RISK MANAGEMENT IMPLICATIONS**

21. NONE

### **POLICY FRAMEWORK IMPLICATIONS**

22. NONE

<b>KEY DECISION?</b>	<b>No</b>
<b>WARDS/COMMUNITIES AFFECTED:</b>	N/A

SUPPORTING DOCUMENTATION

**Appendices**

1.	Information given on Webform to Southampton City Council
2.	Tree Evaluation Method for Protection Orders (TEMPO)
3.	The Southampton (8 Mountain Ash Close) Tree Preservation Order 2019
4.	Email to resident explaining reason behind the making of the order
5.	Google Street view images of the trees subject of this tree preservation order

**Documents In Members' Rooms**

1.	None
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**Equality Impact Assessment**

<b>Do the implications/subject of the report require an Equality and Safety Impact Assessment (ESIA) to be carried out.</b>	<b>No</b>
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**Data Protection Impact Assessment**

<b>Do the implications/subject of the report require a Data Protection Impact Assessment (DPIA) to be carried out.</b>	<b>No</b>
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**Other Background Documents**

**Other Background documents available for inspection at:**

<b>Title of Background Paper(s)</b>	<b>Relevant Paragraph of the Access to Information Procedure Rules / Schedule 12A allowing document to be Exempt/Confidential (if applicable)</b>
1. None.	