

|                          |  |
|--------------------------|--|
| <b>DECISION-MAKER:</b>   | PLANNING RIGHTS OF WAY PANEL   |
| <b>SUBJECT:</b>          | OBJECTION TO THE SOUTHAMPTON (158 ATHELSTAN ROAD) TREE PRESERVATION ORDER 2021 |
| <b>DATE OF DECISION:</b> | AUGUST 24 2021   |
| <b>REPORT OF:</b>        | HEAD OF CITY SERVICES  |

| <b><u>CONTACT DETAILS</u></b> |               |                                  |                    |
|-------------------------------|---------------|----------------------------------|--------------------|
| <b>Executive Director</b>     | <b>Title</b>  | Executive Director Place         |                    |
|                               | <b>Name:</b>  | Kate Martin                      | Tel: 023 8083 3005 |
|                               | <b>E-mail</b> | Kate.martin@southampton.gov.uk   |                    |
| <b>Author:</b>                | <b>Title</b>  | Assistant Tree Officer           |                    |
|                               | <b>Name:</b>  | Maria Mushens                    | Tel: 023 8083 3005 |
|                               | <b>E-mail</b> | Maria.mushens@southampton.gov.uk |                    |

| <b>STATEMENT OF CONFIDENTIALITY</b>   |  |  |
|---|--|--|
| None  |  |  |
| <b>BRIEF SUMMARY</b>  |  |  |
| <p>Oak tree to the rear of 158 Athelstan Road:<br/> A Tree Preservation Order (TPO) has been placed on this tree as a precautionary measure following requests from the resident to pollard the tree and later to crown reduce and thin the tree.</p> <p>At that time ownership of the tree was uncertain as it sits on land which adjoins our allotment land but it has since been established as belonging to 158 Athelstan Road.</p> <p>An assessment of the tree's suitability for protection was completed and can be seen in Appendix 2 (TEMPO Form). This assessment indicated that the tree was suitable for protection and long-term retention.</p> <p>A letter was received from the tree owners objecting to the TPO on the basis that it provides no visual amenity to the public and that neighbours have access to other trees in the area.</p> |  |  |
| <b>RECOMMENDATIONS:</b>   |  |  |
|   | (i)  | To confirm The Southampton (158 Athelstan Road) Tree Preservation Order 2021 |
| <b>REASONS FOR REPORT RECOMMENDATIONS</b>   |  |  |
| 1.  | The trees size, condition and location mean it contributes to the overall amenity of the area and its protection under a TPO will ensure the long-term retention of these features. It is acknowledged that the visual amenity to the public highway of Athelstan road is somewhat limited and this is reflected in the conservative score given on the TEMPO form. The tree is visible when viewed from between the two neighbouring properties and over the garage |  |

|    |   |
|----|---|
|    | roof. The tree also provides amenity to the members of the public who have allotments.  |
| 2. | The term amenity has not been defined in TPO legislation and the officer has considered all aspects of amenity including the impact to the local environment, which also forms part of the amenity value of the tree.   |
| 3. | It also provides a visual link with the adjacent woodland. It is the Tree Officers opinion that as the tree grows it shall provide more visual amenity from the roadside and the amenity value will increase.   |
| 4. | The officer is not opposed to work being carried out to the tree and has informed the tree owners that the TPO does not prevent them from carrying out work to the tree, moreover just that any work must be applied for and consented to prior to being carried out. The officer has informed the tree owners that a reduction of 1.5 to 2 meters, as suggested by their agent would more than likely be accepted. |

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

|    |   |
|----|---|
| 5. | 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)**

|    |  |
|----|--|
| 6. | 3.07.20 Enquires received regarding TPO status of tree, ownership of tree, how to form a fence around the tree,, asking for reduction of the tree and then a pollard to reduce encroachment over garden.   |
| 7. | 10.03.2021 TPO Made and served   |
| 8. | 08.04.21 Letter received from the tree owners objecting to the TPO together with an email from Talisman Tree Care and photos showing alleged honey fungus rhizomorphs. Talisman Tree Care recommend that if the tree is infected then a reduction and thin of the tree may be appropriate.<br><br>The owner's main objections appears to be; <ul style="list-style-type: none"><li>• that the tree cannot be seen from a public place.</li><li>• that it can be seen by neighbours but there are other trees visible to the neighbours.</li><li>• that a TPO is not confirmed in order that they be allowed to carry out crown reduction and thinning as recommended by Talisman Tree Care due to alleged honey fungus.</li><li>• The tree significantly overhangs and overshadows the garden by a third preventing grass and plants from growing.</li></ul> |
| 9. | Response to objection the main points being: <ul style="list-style-type: none"><li>• It is acknowledged that the visual amenity of the tree is limited from the front of the property. There is significant visual amenity from the allotments and a fair amount of visual amenity from the side of the property when viewed between numbers 158 and 156.</li><li>• Although it is accepted that there are other trees in the area which can be seen by neighbours, the assessment of this tree indicates it is suitable for protection.</li></ul>   |

|  |   |
|--|---|
|  | <ul style="list-style-type: none"> <li>• A TPO would not prevent work being carried out to the tree, only that permission is obtained from the council prior to any work being carried out. Works have been recommended by the Tree surgeon which appear to be reasonable under application.</li> <li>• Our assessment of the canopy overhang and overshadowing of the garden can be reasonably managed with the suggested works.</li> <li>• In response to the alleged honey fungus the Tree Officer agrees with the recommendations from Talisman Tree care hence the indication that reduction works would be agreeable if applied for.</li> </ul> |
|--|---|

## **RESOURCE IMPLICATIONS**

### **Capital/Revenue**

|     |   |
|-----|---|
| 10. | Cost will be those associated with the administration of confirming the Order and administration of any subsequent applications made under the Order. |
|-----|---|

### **Property/Other**

|     |   |
|-----|---|
| 11. | If the order 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 reasonably foreseeable. |
|-----|---|

## **LEGAL IMPLICATIONS**

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

|     |  |
|-----|--|
| 12. | 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:**

|     |  |
|-----|--|
| 13. | 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**

|     |      |
|-----|------|
| 14. | None |
|-----|------|

## **POLICY FRAMEWORK IMPLICATIONS**

|     |      |
|-----|------|
| 15. | None |
|-----|------|

|  |   |
|--|---|
| <b>KEY DECISION?</b>                   | No  |
| <b>WARDS/COMMUNITIES AFFECTED:</b>     | <b>Peartree Ward</b>  |
| <b><u>SUPPORTING DOCUMENTATION</u></b> |   |
| <b>Appendices</b>                      |   |
| 1.                                     | The Order: The Southampton (158 Athelstan Road ) Tree Preservation Order 2020 |
| 2.                                     | Tree Evaluation Method for Preservation Orders (TEMPO)                        |
| 3                                      | Photos  |

#### **Documents In Members' Rooms**

|    |      |
|----|------|
| 1. | None |
|----|------|

#### **Equality Impact Assessment**

**Do the implications/subject of the report require an Equality and Safety Impact Assessment (ESIA) to be carried out.**

No

#### **Data Protection Impact Assessment**

**Do the implications/subject of the report require a Data Protection Impact Assessment (DPIA) to be carried out.**

No

#### **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  |
| 2.                                  |   |

# **APPENDIX 1**



## **Form of Tree Preservation Order**

**Town and Country Planning Act 1990**

## **The Southampton (158 Athelstan Road) Tree Preservation Order 2021**

**Southampton City Council, in exercise of the powers conferred on them by section 198 of the Town and Country Planning Act 1990 make the following Order—**

### **Citation**

1. This Order may be cited as The Southampton (158 Athelstan Road) Tree Preservation Order 2021

### **Interpretation**

2.—(1) In this Order “the authority” means the Southampton City Council.

(2) In this Order any reference to a numbered section is a reference to the section so numbered in the Town and Country Planning Act 1990 and any reference to a numbered regulation is a reference to the regulation so numbered in the Town and Country Planning (Tree Preservation)(England) Regulations 2012.

### **Effect**

3.—(1) Subject to article 4, this Order takes effect provisionally on the date on which it is made.

(2) Without prejudice to subsection (7) of section 198 (power to make tree preservation orders) or subsection (1) of section 200 (tree preservation orders: Forestry Commissioners) and, subject to the exceptions in regulation 14, no person shall—

- (a) cut down, top, lop, uproot, wilfully damage, or wilfully destroy; or
- (b) cause or permit the cutting down, topping, lopping, uprooting, wilful damage or wilful destruction of,

any tree specified in the Schedule to this Order except with the written consent of the authority in accordance with regulations 16 and 17, or of the Secretary of State in accordance with regulation

**23, and, where such consent is given subject to conditions, in accordance with those conditions.**

## **Application to trees to be planted pursuant to a condition**

**4. In relation to any tree identified in the first column of the Schedule by the letter “C”, being a tree to be planted pursuant to a condition imposed under paragraph (a) of section 197 (planning permission to include appropriate provision for preservation and planting of trees), this Order takes effect as from the time when the tree is planted.**

**Dated this 10th March 2021**

**Signed on behalf of the SOUTHAMPTON CITY COUNCIL**

A handwritten signature in black ink, appearing to read "Southampton City Council".

**Authorised by the Council to sign in that behalf**

## SCHEDULE 1

### The Southampton (158 Athelstan Road) Tree Preservation Order 2021

#### Individual Trees (encircled black on the map)

| No on Map | Description | Situation                               |
|-----------|-------------|---|
| T1        | Oak         | On rear boundary of 158 Athelstan Road. |

#### Groups of trees (within a broken black line on the map)

| No on Map | Description | Situation |
|-----------|-------------|-----------|
|           | NONE        |           |

#### Woodlands (within a continuous black line on the map)

| No on Map | Description | Situation |
|-----------|-------------|-----------|
|           | NONE        |           |

#### Trees Specified by Reference to an Area (within a dotted black line on the map)

| No on Map | Description | Situation |
|-----------|-------------|-----------|
|           | NONE        |           |



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The Southampton (158 Athelstan Road) Tree Preservation Order 2012

|                 |                        |
|-----------------|------------------------|
| TPO Ref: T2-738 | Department: Trees team |
| Drawn: GCB      | Scale: not to scale    |

- Key
- Individual Trees
  - Group
  - Woodland
  - ▨ Area
  - Not TPO'd

## APPENDIX 2- Tempo Form



### TREE EVALUATION METHOD FOR PRESERVATION ORDERS (TEMPO): SURVEY DATA SHEET & DECISION GUIDE

Date: 3rd March 2021

Surveyor: GCB & MM

#### Tree details

TPO Ref: T2-

Tree/Group No:

Species: Common Oak

Location: Rear garden of 158 Athelston Road

The Southampton ( ) Tree Preservation Order 201

#### Part 1: Amenity assessment

##### a) Condition & suitability for TPO:

**Refer to Guidance Note for definitions**

- |                     |                         |
|---------------------|-------------------------|
| 5) Good             | Highly suitable         |
| 3) Fair             | Suitable                |
| 1) Poor             | Unlikely to be suitable |
| 0) Dead             | Unsuitable              |
| 0) Dying/dangerous* | Unsuitable              |

**Score & Notes 3**

\* Relates to existing condition and is intended to apply to severe irremediable effects only.

##### b) Remaining longevity (in years) & suitability for TPO:

- |           |                 |
|-----------|-----------------|
| 5) 100+   | Highly suitable |
| 4) 40-100 | Very suitable   |
| 2) 20-40  | Suitable        |
| 1) 10-20  | Just suitable   |
| 0) <10*   | Unsuitable      |

**Score & Notes 5**

**4 Conservative Score**

\* Includes trees which are an existing or near future nuisance, including those clearly outgrowing their context, or which are significantly negating the potential of other trees of better quality.

##### c) Relative public visibility & suitability for TPO:

*Consider realistic potential for future visibility with changed land use.*

- |   |                 |
|---|-----------------|
| 5) Very large trees with some visibility, or prominent large trees. | Highly suitable |
| 4) Large trees, or medium trees clearly visible to the public       | Suitable        |
| 3) Medium trees, or large trees with limited view only              | Just suitable   |
| 2) Young, small, or medium/large trees visible only with difficulty | Barely suitable |
| 1) Trees not visible to the public, regardless of size              | Probably unsuit |

Score & Notes 2

**2**

##### d) Other factors

*Trees must have accrued 7 or more points (with no zero score) to qualify*

##### 5) Principal components of arboricultural features, or veteran trees

**Score & Notes 1, but could be deemed to link with adjacent woodland.**

- 4) Tree groups, or members of groups important for their cohesion
  - 3) Trees with identifiable historic, commemorative or habit importance
  - 2) Trees of particularly good form, especially if rare or unusual
  - 1) Trees with none of the above additional redeeming features
- 

#### **Part 2: Expediency assessment**

Trees must have accrued 9 or more points to qualify.

**Score & Notes 2**

**3**

- 5) Immediate threat to tree
  - 3) Foreseeable threat to tree
  - 2) Perceived threat to tree
  - 1) Precautionary only.
- 

#### **Part 3: Decision guide**

|       |                              |
|-------|------------------------------|
| Any 0 | <b>Do not apply TPO</b>      |
| 1-6   | <b>TPO indefensible</b>      |
| 7-10  | <b>Does not merit TPO</b>    |
| 11-14 | <b>TPO defensible</b>        |
| 15+   | <b>Definitely merits TPO</b> |

**Add Scores for  
Total:13**

**Decision:  
Make TPO**

**Appendix 3 -Photo1 From front- Athelstan Road  
Winter**



**Photo 2 from side - Winter**



**Photo 3: View from Allotments at rear of  
158 Athelstan Road- Summer**

