

<b>DECISION-MAKER:</b>	PLANNING AND RIGHTS OF WAY PANEL
<b>SUBJECT:</b>	Objection received regarding the making of The Southampton (112 Botany Bay Road) Tree Preservation Order 2023.
<b>DATE OF DECISION:</b>	12 <sup>th</sup> December 2023
<b>REPORT OF:</b>	<b>David Tyrie – Head of City Services</b>

<b><u>CONTACT DETAILS</u></b>			
<b>Executive Director</b>	<b>Title</b>	Executive Director Place	
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<b>Author:</b>	<b>Title</b>	City Tree Officer	
	<b>Name:</b>	Gary Claydon-Bone	Tel: 023 8083 3005
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<b>STATEMENT OF CONFIDENTIALITY</b>	
NONE	
<b>BRIEF SUMMARY</b>	
To consider the objection received in relation to the making of the Tree Preservation Order.	
<b>RECOMMENDATIONS:</b>	
(i)	To confirm The Southampton (112 Botany Bay Road) Tree Preservation Order 2023.
<b>REASONS FOR REPORT RECOMMENDATIONS</b>	
1.	The council received a telephone call giving information that the tree owners are planning on having the tree felled.
<b>ALTERNATIVE OPTIONS CONSIDERED AND REJECTED</b>	
2.	Not protecting the trees. With no formal protection of these trees, the landowner can fell the trees and can do so with no notification or any formal notice or permission. This would not only have a negative impact to the local street scene. It would also negatively impact the environmental and ecological benefits that the trees provide to the wider location.
<b>DETAIL (Including consultation carried out)</b>	
3.	July 2023 – A telephone call was put through to the tree team and information was given that there is a significant concern that a prominent tree at the front of 112 Botany Bay Road is going to be felled. The caller requested that a tree officer visit the site to look at the tree to see if it is suitable to be protected by a tree preservation order.
4.	10 <sup>th</sup> July 2023 – A tree officer visited the site to view the tree from a public area to make an assessment. The Robinia tree is situated on the front boundary of

	the property and abuts Botany Bay Road. The tree has very high public visual amenity and can clearly be seen as a feature to the local street scene. The tree also provides amenity to the environment and to the local ecology. (Appendix 1)
5.	Part of the assessment made to ascertain the suitability of a tree for a preservation order can include the completion of a Tree Evaluation Method for Protection Orders (TEMPO) This is an industry accepted tool for the assessment of the suitability of placing a Tree Preservation Order on a tree. (Appendix 2)
6.	The officer completed the form and chose to give a conservative score on some of the elements. This has been done intentionally as it would be easier to demonstrate that the tree attained a higher score if the evaluation was put to test.
7.	Due to the prominence of the tree and the threat of it being felled, a tree preservation order was deemed suitable, and this was supported by the score of the TEMPO evaluation.
8.	12 <sup>th</sup> July 2023. The Southampton (112 Botany Bay) Tree Preservation Order 2023 was made and served on to the required properties. This order protected a Robinia in the front garden of the property. (Appendix 3)
9.	<p>7<sup>th</sup> August 2023. An objection was received from owner of the property. In the letter, the resident outlined the reasons for their objection, the main points of which are as follows: -</p> <p>The tree owner has suffered verbal complaints regarding their tree.</p> <p>The tree is blocking light to the properties, and this has caused an increase in energy bills.</p> <p>Due to the numerous complaints received from members of the public regarding this tree, it is causing mental health issues to the tree owners.</p> <p>The tree could cause damage if it were to fall, due to its large size. It is also too large for the plot of land.</p> <p>Branches have broken and have either fallen or hang in the canopy. This has occurred in moderate to high wind events.</p> <p>The tree has large spikes, and this has caused damage to vehicles.</p> <p>The trees canopy overhangs the road and this, combined with the trees opposite, causes a reduction in the width of the road, which results in a hazard. It also overhangs cables and a streetlight which reduces visibility during darkness which increases the risk of harm. (Appendix 4)</p>
10.	I have considered the main points of the objection and reviewed each point to see if any raised are sufficient grounds to remove the order, which I believe this test had not been met.

11.	The council cannot take negative verbal comments made to the tree owner as a legitimate reason for not protecting tree. If the council were to accept this as a justified reason not to protect a tree, it would find it impossible ever to protect any tree within the city.
12.	A shade calculation was undertaken, and it demonstrated that there would be very limited impact to the property and that any shadow would be transient and would amount a minimal percentage of the day.
13.	There appears to be a significant concern regarding the safety of the tree, be it form branches breaking in windy conditions or fear of it failing and causing harm to residents or users of the highway. The tree owners are responsible for the trees condition and if it were proven to be in poor health and to present an actual risk, then the council would not refuse the felling of the tree. However, at the date of the writing of this report, the officer has not seen sight of any report or received an application to fell in relation to the trees condition.
14.	There is also a concern over the canopy extending over the highway which has the potential to cause a restriction in the carriageway use and the potential to block light from the public streetlamp, both of which are alleged to potentially cause harm.
15.	The Council has working partnerships with companies who undertake inspections of the highway and public streetlamps. Should an issue be identified relating to the tree blocking the streetlamp or if it causes an obstruction to the highway, then the tree owner may be served a notice under section 154 of The Highways Act 1980.
16.	Under this notice, the details of the defect will be identified along with instructions of what action is to be taken and a timescale given as to when it should be completed by.
17.	3 <sup>rd</sup> November 2023. An email was sent to the objector and the main points of their objection were covered. In this email, the option to withdraw their objection was given, however the council have not received a response and therefore must take the objection to be still outstanding. (Appendix 5)
18.	The officer invites the members to consider the value that the tree provides to the local amenity and to weigh this against the reasons that have been put forward to support the removal of the tree preservation order.
20.	Given the high visual amenity that the tree provides and that the tree is at risk of being felled, the officer requests that the members approve the confirmation of the order.
<b>RESOURCE IMPLICATIONS</b>	
<b><u>Capital/Revenue</u></b>	
	Cost will be those associated with the administration of confirming the Order and administration of any subsequent applications made under the Order.
<b><u>Property/Other</u></b>	
	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.
<b>LEGAL IMPLICATIONS</b>	
<b><u>Statutory power to undertake proposals in the report:</u></b>	
	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.
<b><u>Other Legal Implications:</u></b>	
	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
<b>RISK MANAGEMENT IMPLICATIONS</b>	
	NONE
<b>POLICY FRAMEWORK IMPLICATIONS</b>	
	NONE

<b>KEY DECISION?</b>	<b>Yes/No</b>
<b>WARDS/COMMUNITIES AFFECTED:</b>	
<b><u>SUPPORTING DOCUMENTATION</u></b>	
<b>Appendices</b>	
1.	Photographs of tree
2.	Tree Evaluation Method for Protection Orders
3.	The Southampton (112 Botany Bay) Tree Preservation Order 2023
4.	Letter from resident objecting to tree preservation order
5.	Email response to resident regarding objection

**Documents In Members' Rooms**

1.	
2.	

**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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<b>Data Protection Impact Assessment</b>		
<b>Do the implications/subject of the report require a Data Protection Impact Assessment (DPIA) to be carried out.</b>		<b>No</b>
<b>Other Background Documents</b>		
<b>Other Background documents available for inspection at:</b>		
<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.		
2.		